

Exhibit D

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Volume: I

1

2

Pages: 1-109

3

Exhibits: 1-3

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

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C.A. No. 04-10131

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10 HEATHER KIERNAN,

11 Plaintiff CERTIFIED ORIGINAL
12 vs. LEGALINK BOSTON

13 ARMORED MOTOR SERVICE OF AMERICA, INC. and

14 FRANCESCO CIAMBRIELLO,

15 Defendants

16 ----- X

17 DEPOSITION OF CHRISTOPHER W. ABREU

18 Thursday, June 2, 2005 - 10:15 a.m.

19 MORGAN BROWN & JOY, LLP

20 200 State Street - 11th Floor

21 Boston, Massachusetts

22 -----

23 Reporter: Maureen J. Manzi, CSR

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1 I N D E X

2 CHRISTOPHER W. ABREU

3 BY MR. MCLEOD 4, 90, 103, 106

4 BY MS. ROMANTZ 68, 98, 105

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EXHIBITS

10	Exhibit 1, notes.....	31
11	Exhibit 2, series of e-mails.....	59
12	Exhibit 3, Working Detectives Tape	
13	6/20/2003.....	86

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23 *Exhibit 1 and 2 included in the transcript.

24 *Exhibit 3 retained by Attorney Romantz.

1 even. I remember it being a healthy stack of
2 videotapes.

3 Q. Did you have any understanding as to what
4 the status of the proceedings were against the
5 defendant at that time?

6 A. No.

7 Q. Did you know whether or not he had already
8 been indicted?

9 A. No.

10 Q. When you were given the tapes, did you
11 already have an appointment to meet Mr. Ardito at
12 the facility?

13 A. Yes.

14 Q. How was that appointment made?

15 A. It must have been made by Chris Markey or
16 Chris Saunders.

17 Q. So you didn't make it?

18 A. No. I was just told that -- I was just
19 asked if I could go watch the tapes at a certain
20 time with David.

21 Q. And have you met Mr. Ardito prior to that
22 day?

23 A. Yes.

24 Q. Had you worked with him on other cases?

1 A. Yes.

14

2 Q. Had you worked with him on this case?

3 A. No.

4 Q. After you took the tapes -- let me back up.

5 when you took the tapes, where physically were you?

6 A. In the Attleboro District Court office.

7 Q. When you went to AMSA, did you take your
8 car?

9 A. Yes.

10 Q. What kind of car was that at the time?

11 A. It was a '96 BMW.

12 Q. And you drove to AMSA?

13 A. Yes.

14 Q. In the car?

15 A. Yes.

16 Q. Where were the tapes in the car when you
17 were driving?

18 A. Within my possession.

19 Q. Front seat, back seat, trunk?

20 A. Front seat probably I think.

21 Q. Did you have a briefcase with you?

22 A. Yes.

23 Q. Any other bags or --

24 A. No.

1 Q. No. Did you drive right to AMSA? 15

2 A. Yes.

3 Q. When you drove to -- pardon me. When you
4 arrived at AMSA, who did you meet and where were
5 they? Who was the first person you met and where
6 were they?

7 A. I don't totally recall. It might have been
8 I met with David outside.

9 Q. You say might have been.

10 A. I'm not totally sure. And then we went in.
11 I don't know who we met or how we got in. It was I
12 probably met David outside.

13 Q. And you and Mr. Arduo walked into the
14 facilities together?

15 A. Yes.

16 Q. Did you have to buzz or hit a doorbell or
17 anything like that to get in?

18 A. I think so because I think it was a metal
19 door with a camera outside of it.

20 Q. Did you have to sign in?

21 A. I don't recall so.

22 Q. And who did you meet when you walked into
23 the facility?

24 A. I met with somebody from the Security

1 Department from there. I don't recall his name. 16

2 Q. Jason Cory, does that ring a bell?

3 A. No.

4 Q. Did you have to show any identification when
5 you arrived?

6 A. Not that I recall.

7 Q. Did Mr. Ardito?

8 A. Not that I recall.

9 Q. And you didn't sign anything?

10 A. Not that I recall.

11 Q. In preparation for the deposition, did you
12 talk to anyone today?

13 A. No, I haven't.

14 Q. When was the last time you spoke with Mr.
15 Ardito concerning this case?

16 A. It was at the motion, at the criminal trial.

17 Q. The motion hearing?

18 A. (Witness nodded affirmatively.)

19 Q. So you met somebody from security?

20 A. Yeah.

21 Q. And you knew they were from security because
22 why?

23 A. They must have introduced themselves to me
24 as the security representative.

1 you brought them back? 18

2 A. Well, I can only say this. On any normal
3 case, there's no question I would have taken them
4 back to keep a chain of custody. In this case, the
5 only way I would have left them there is because
6 nobody had the technology to tape them at a frame
7 where they could watch it on any regular VCR.

8 Q. Let me ask you this. When you say take them
9 back, what I'm trying to figure out is were you
10 going to be handing them to Mr. Saunders, putting
11 them in his office, putting them in a room that was
12 for films that was ceased, something? What was the
13 procedure, if anything?

14 A. In my normal course, I would have just put
15 them back in his office.

16 Q. And he had his own office, he wasn't in a
17 cube or anything like that?

18 A. He had his own office. We all had our own
19 office.

20 Q. How long had you known Mr. Ardito up to that
21 time?

22 A. Tough to say. Maybe a year. Maybe I had
23 some cases when I was in Taunton. And I saw him
24 regularly when I was in Attleboro.

1 A. I know it wasn't a suit. Maybe pants and a
2 shirt.

3 Q. Other than this gentleman that you met at
4 the door, did you meet anybody else at the facility
5 that day that was employed by AMSA arguably?

6 A. Not that I recall. I mean, there were other
7 people I believe there. But did I specifically meet
8 with anybody, no, I don't recall.

9 Q. You weren't introduced to anybody else?

10 A. I don't recall being introduced to anybody
11 else.

12 Q. How long were you at the facility that day?

13 A. To the best of my memory, maybe a couple of
14 hours. Maybe an hour. Between an hour and two
15 hours.

16 Q. Now, did you go over there in the afternoon?

17 A. Yes.

18 Q. What day of the week was it?

19 A. I don't recall.

20 Q. That morning you would have done
21 arraignments or something in the district court?

22 A. I think I was actually in the trial side.
23 So basically in a typical morning if I'm in the
24 trial side, I would take all my matters and be

1 Q. With all these trials, did you have to work
2 weekends?

3 A. No. I would bring stuff home at times.

4 Q. What time would you typically get in the
5 office in the morning?

6 A. 8:00.

7 Q. What time would you leave?

8 A. 5:00.

9 Q. When you arrived at the facility and you
10 were met by the security individual and Mr. Ardito
11 was with you, what was the next thing that happened?

12 A. I believe we went to this individual that we
13 met with, this security agent at his office. The
14 only thing I remember about this office is he had
15 some toy police cruisers in his office. That sticks
16 in my head. And then after we left his office, we
17 went to watch the videotapes.

18 Q. Did you play with the cruiser?

19 A. I just found it out of the head toy cruisers
20 in his office. I didn't have a chance to play with
21 them.

22 Q. And then you went to the room where you
23 viewed the tapes?

24 A. Yes.

1 with the security gentleman, Mr. Ardito was with
2 you?

3 A. Yes.

4 Q. Did you sit down?

5 A. I don't think we sat down, no.

6 Q. You had the tapes with you though?

7 A. Oh, yeah.

8 Q. Were they wrapped up? Were they in an
9 envelope or anything like that or were they kind of
10 just bound by rubberband?

11 A. Just by rubberband from what I remember.

12 Q. Did you have any understanding as to how the
13 D.A.'s office came into possession of these tapes?

14 A. At that point in time, I did not. I later
15 learned.

16 Q. What did you later learn?

17 A. That the Attleboro detectives confiscated
18 it.

19 Q. Do you know whether or not they confiscated
20 them all at once or on different occasions?

21 A. I don't recall.

22 Q. After this day, was that your one and only
23 involvement with the case other than testifying at
24 the motion hearing?

1 A. Yes.

2 Q. Now, did you take -- strike that. When you
3 started watching the tapes -- let me back up even
4 more. When you walked into the room, what did you
5 do with the tapes?

6 A. I believe they had either letters or numbers
7 on them, either A, B, C or 1, 2, 3. And with that
8 and we just started putting different tapes in to
9 see which one was relevant to what we wanted to
10 watch.

11 Q. Did you have an understanding as to what it
12 was you wanted to watch?

13 A. Yes.

14 Q. When you say we were putting them in, who
15 was putting them in the VCR?

16 A. I believe I had the stack of tapes and I
17 just gave them to the security representative to try
18 looking for the ones that would show the parties
19 involved in this case.

20 Q. Did you look at more than one tape?

21 A. Yes.

22 Q. So you had the stack of -- did you say it
23 was five or six or four or five tapes?

24 A. I just remember it being a stack. Either

1 four or five or six.

28

2 Q. So you had a stack of tapes?

3 A. Yes.

4 Q. And then you would hand off a tape to the
5 security guy?

6 A. Um-hmm.

7 Q. He would stick it in the VCR?

8 A. Um-hmm.

9 Q. You might or might not watch it for a bit
10 depending on what was on there?

11 A. Um-hmm.

12 Q. You watched more than one tape?

13 A. Right.

14 Q. When you went to grab the second tape from
15 the stack to hand to the security guy, what happened
16 to the first tape or what happened to the tape you
17 were watching, did he give it back to you?

18 A. When he took it out, I don't recall. Either
19 he gave it back to me or he just put it down on the
20 side.

21 Q. Did you watch all of the tapes?

22 A. I believe we would put -- I believe we put
23 in all the tapes just to see if there was anything
24 pertaining to the incident, but he could quickly

1 A. Well, basically I knew I was looking for
2 just -- if I recall right, there were only two
3 people in the establishment, and I just wanted the
4 tapes that depicted where they were during this
5 alleged incident.

6 Q. And did you communicate that to him at some
7 point or --

8 A. Oh, yeah.

9 Q. When was that?

10 A. While we were putting the tapes in.

11 Q. It wasn't in his office?

12 A. No, I don't think so.

13 Q. Did Mr. Ardito have any discussions during
14 this time while you were watching the tapes? What
15 was he doing?

16 A. Well, he also wanted to see certain
17 segments. Basically from what I recall, the tapes
18 that we were looking for were tapes where they
19 initially were working together. Wherever they
20 moved, okay, you might have to put a different tape
21 in because we wanted to keep that chain of whatever
22 they were doing. We might have to go through two or
23 three tapes to get to that.

24 Q. You wanted to watch it in sequence?

1 strengthen my thoughts that the tape was actually
2 divided, okay, into six screens. So with this
3 security system you had -- if you wanted to put up
4 frame 16, you would type up 16 or hit a button for
5 16, and frame 16 at that time for tape D would come
6 up on the screen.

7 Q. You said the screen was divided into six?

8 A. I think so. Six or four. I just remember
9 him pulling up different segments of a screen, to
10 the best of my knowledge. I don't have a perfect
11 memory of it, but that's what I think.

12 Q. To the right of number 16 there's a space it
13 appears and then quotation marks.

14 A. Um-hmm.

15 Q. What does that say, please?

16 A. "I'm not going in there."

17 Q. Does that refresh your recollection as to
18 what you saw on the tapes?

19 A. Oh, yes, I remember.

20 Q. What was it, please?

21 A. Well, on this frame of the tape, the alleged
22 defendant at the time, they had gotten up from an
23 area where they had been working and they began
24 walking. And if I remember right, suddenly you hit

1 hands around her waist vicinity, then they walked
2 down the hallway together. You could only see the
3 back of their heads. And then they went to another
4 dead spot, camera angle. You couldn't see them
5 anymore. Then we had to go to another tape to
6 continue that chain.

7 Q. You mean other than D and F?

8 A. No. We had to go from tape D to tape F --

9 Q. Okay. Thanks.

10 A. -- to keep that chain of where they were
11 walking to. That tape F then shows them walking
12 into an office.

13 Q. Was there audio on that tape?

14 A. I don't recall hearing any audio. Well,
15 what I recall, these tapes were very, very bad as
16 far as audio goes. You could not really hear much
17 of anything. Okay. And that's why the "I'm not
18 going in there" kind of jumped out at me because I
19 want to say that's one of the only statements I
20 heard on the tape.

21 Q. Then you have underneath 17:40:31 under
22 letter F?

23 A. Um-hmm.

24 Q. What does that time represent?

1 A. That would be the time that I recall that
2 she left the office on the videotape.

3 Q. And underneath that it says 17:34:02?

4 A. Correct.

5 Q. With an arrow in -- what's that handwriting?

6 A. "In office."

7 Q. "In office"?

8 A. Yes.

9 Q. What does that mean?

10 A. I don't recall.

11 Q. Is that when you saw them go into the
12 office?

13 A. I don't recall.

14 Q. On tape F you couldn't hear any audio at
15 all?

16 A. No.

17 Q. When you saw her leave the office, did you
18 see at some point the defendant leaving the office?

19 A. I believe he left the office sometime after
20 her. She left first.

21 Q. What was the time span between her leaving
22 and him leaving?

23 A. Maybe a minute or two. A few minutes. It
24 wasn't that long.

1 there any radios going or anything like that? 43

2 MS. ROMANTZ: Just to clarify. When he
3 was watching the videos or while --

4 Q. While you were watching the videos.

5 A. While I was watching the videos, was
6 anything going on. I believe people were working,
7 but my attention wasn't drawn to anything specific.

8 Q. Was the door open or closed?

9 A. I don't recall.

10 Q. Was the room windowed?

11 A. The room where I was watching the
12 videotapes?

13 Q. Um-hmm.

14 A. No.

15 Q. This might seem stupid. But was it hot in
16 there with all that equipment?

17 A. I don't recall.

18 Q. You were in there for a couple of hours in
19 that room?

20 A. An hour, a little more than an hour.

21 Q. What kind of conversation was going on in
22 the room while you were watching the tapes?

23 A. We were basically just trying to, David and
24 I to agree on what we heard to make sure we were

1 seeing and observing the same thing. 44

2 Q. Did you ask him if he agreed with the
3 statement "I'm not going in there"?

4 A. I'm not sure, but I know I heard it.

5 Q. When you say you were having these
6 discussions about whether or not you could agree or
7 disagree in terms of what you were seeing on the
8 tapes, you were having those discussions
9 contemporaneous with the viewing?

10 A. Correct.

11 Q. Are the notes that have been marked as
12 Exhibit 1, do they reflect some of the subject
13 matter that you were discussing with Mr. Ardito at
14 that time?

15 A. Not so much what I was discussing with Mr.
16 Ardito. But what I was doing is just because this
17 was just a quick initial viewing of the tapes, what
18 I was doing was anything that I found somewhat
19 compelling, I would write down. So I would -- and I
20 just wrote these notes down to give back to Chris
21 Saunders so he could then give them to Chris Markey
22 and just go to those tapes to look at those points.

23 Q. With regard to the notes. Were you going to
24 be preparing any report or memorandum or anything?

1 day?

46

2 A. I'm not sure.

3 Q. Is this the only page of notes you gave to
4 Mr. Saunders?

5 A. I'm not sure.

6 Q. And let me qualify it. Did you give these
7 notes to Mr. Saunders?

8 A. I don't recall. I either just left them in
9 his office with the videotapes if I had them. I
10 just don't recall. If I had brought the videotapes
11 back like I think I would have, this would have been
12 left with the videotapes, folded up and thrown on
13 top of with the elastic.

14 Q. The reason why you had gone to AMSA that day
15 is because you didn't have the equipment to look at
16 the videotapes?

17 A. Correct.

18 Q. Did you have any understanding that day as
19 to how you'd go about having the tapes, for lack of
20 a better term, decoded or formatted in such a way
21 that they could play on a normal VCR?

22 A. Well, I knew that they had to be -- you had
23 to get a regular VCR and tape it off of the time
24 lapse VCR while it was playing in its time lapse

1 mode, and that's what you would have to do to make a
2 copy of the tape.

3 Q. Right. But to make it so that it's visible
4 on a regular VCR without having to schlep, for lack
5 of a better term, to go to this armored motor place
6 and look at it there?

7 A. That's what you would have to do, is to copy
8 it off of the time lapse VCR, and that's the only
9 way you'd be able to record a certain segment of it.
10 First you'd have to pull down a certain screen you'd
11 want, play it and then tape off of that VCR that's
12 being played.

13 Q. Let me ask you this. Did the D.A.'s office
14 have at its disposal at this time any facility or
15 any technology that could have taken a copy of those
16 videotapes and formatted them in such a way that
17 they could be played on a regular VCR?

18 MS. ROMANTZ: Objection.

19 A. At that time I don't think the D.A.'s office
20 had anything that could either play them or record
21 them. If they had, then Mr. Ardito would have met
22 with Chris at New Bedford to watch the tapes instead
23 of us having to go to the security facility.

24 Q. Are you aware that at some point the tapes

1 were sent out to REACT in Raynham?

48

2 A. I am not.

3 Q. Have you ever worked with REACT?

4 A. No, I have not.

5 Q. What was the last scene you saw on the
6 videotapes on that day when you were viewing them?

7 A. I don't recall. It may have been when they
8 were outside in the parking lot and then they came
9 back inside or she came back inside.

10 Q. On that day did you have any understanding
11 as to whether or not there were any civil claims
12 against AMSA?

13 A. I knew nothing. I wasn't -- I knew -- I
14 wasn't even sure if the defendant was indicted
15 regarding this case.

16 Q. Did Mr. Ardito make any remark that the
17 company was being sued or was going to be sued or
18 there were claims against the company of any kind?

19 A. No.

20 Q. Did the security official that you met with,
21 did he make any reference to that?

22 A. Not that I recall.

23 Q. Now, in terms of the room itself, if you
24 could describe for me -- strike. Were you and Mr.

1 A. Actually I believe he was on my right. 50

2 Q. And when you were taking notes, you were
3 doing it off of your lap?

4 A. Right.

5 Q. Mr. Ardito was doing the same thing?

6 A. I believe so.

7 Q. Where was the security guy standing?

8 A. Straight ahead.

9 Q. So his back was to you?

10 A. He was more turned at an angle facing us,
11 and then he would put a tape in and he would kind of
12 face us again while we were watching the tapes. So
13 he could also watch the tapes while the three of us
14 -- well, the three of us were all watching the
15 tapes. So that way he could get an angle at it
16 also. If he didn't feel this was something specific
17 to the alleged incident, he would either try a
18 different frame or try a different tape. So he was
19 standing if I remember right most of the time.

20 Q. And you kept all the tapes and you were
21 handing them off to him one by one?

22 A. I don't recall if I just put them down and
23 he kept trying or if I handed him one by one. I
24 don't recall.

1 Q. Put them down where? 51

2 A. Either on the shelf or on the floor. I
3 don't recall.

4 Q. Now, when he would take the tapes out, what
5 would he do with them?

6 A. He'd put them in the VCR.

7 Q. When he took the tapes out of the VCR, what
8 would he do with them?

9 A. I don't recall. He either gave them to me
10 or he put them down somewhere on the table or some
11 box or something like that on the shelf.

12 Q. Where was the table?

13 A. I don't recall there being a table. I just
14 don't know what he did with the tapes afterwards.

15 Q. Where was the shelf?

16 A. The units that house all the VCRs?

17 Q. Yes.

18 A. Perhaps there was space there. I really
19 don't recall what happened to the tapes.

20 Q. After you stopped watching the tapes, what
21 did you then do at the facility?

22 A. We basically just shook hands and left.

23 Q. Who's "we"?

24 A. Mr. Ardito, I and the security consultant,

1 and then we left the facility.

52

2 Q. Did you use the `facilities, get a soda?

3 A. No.

4 Q. Play with the police cars? No. Okay.

5 And did you and Mr. Ardito leave the
6 building together?

7 A. Yes.

8 Q. Did the security person leave with you?

9 A. No.

10 Q. Did he walk you to the door?

11 A. I don't recall.

12 Q. Were you required to sign out or check out
13 or go through any kind of protocol?

14 A. You didn't have to sign out or check out. I
15 don't recall that. But you had to be buzzed out or
16 the door would not open.

17 Q. Who buzzed you out?

18 A. I don't know.

19 Q. And were you and Mr. Ardito talking during
20 this time period?

21 A. Yes.

22 Q. And what were you talking about?

23 A. I don't recall.

24 Q. Were you talking about what you saw on the

1 comings and goings at that time?

2 A. No.

3 Q. The entranceway where you would have entered
4 into the D.A.'s office at that time, was it under
5 video surveillance?

6 A. No.

7 Q. Did you bring the tapes back?

8 A. I don't recall. I think I did, but maybe I
9 didn't. Like I said, the only reason I would have
10 left the tapes there would be to copy them. But I
11 still don't see myself doing that.

12 Q. Was there any discussion about AMSA making
13 copies of the tapes for you?

14 A. I don't remember, that's the thing.

15 Q. Was there any discussion about AMSA saying,
16 you know, we'll get these tapes formatted for you in
17 such a way so you can play them on a normal VCR or
18 something along those lines?

19 A. I don't remember. I don't know. I just
20 remember leaving. I would think that I had the
21 tapes. But it was so long ago, I just have no idea.

22 Q. Well, in sitting in the office and viewing
23 the tapes, did you have any understanding as to,
24 especially with regard to the comment "I'm not going

1 A. Yeah.

2 Q. There was no discussion between you and the
3 security person that day concerning whether or not
4 they could do it for you?

5 A. I don't recall.

6 Q. Because you weren't aware of any technology
7 available to the D.A.'s office that could do it?

8 A. Right.

9 Q. If that technology had been available, would
10 you needed to have to go to AMSA that day?

11 MS. ROMANTZ: Objection.

12 A. I don't think so, no.

13 Q. Now, you say you would have brought them
14 back to Mr. Saunders' office?

15 A. Correct.

16 Q. Any reason why you wouldn't have brought
17 them back to Mr. Markey's office?

18 A. His office is in New Bedford.

19 Q. And you say that if you did bring them back,
20 you would have left them on his desk?

21 A. Or -- he also had a bookshelf I remember in
22 his office. So either on his desk or in his office.

23 Q. After you viewed the tapes, did you see Mr.
24 Saunders that day?

1 A. I don't recall.

2 Q. Did you see Mr. Saunders' secretary that
3 day?

4 A. We all had the same secretaries.

5 Q. So did you see her?

6 A. I don't recall.

7 Q. What was her name?

8 A. Well, there was a Janice who was in charge
9 of our victim witness advocates, and she was the
10 only. And then we had a Julie. Julie George who
11 was basically the person who handled a lot of the
12 phone calls, stuff like that.

13 Q. Was Julie the one who wrote the Post-it note
14 that's marked on Exhibit 1?

15 A. Yes, I think she was.

16 Q. Okay. Thanks. If I understand you
17 correctly, you don't recall if you spoke to Mr.
18 Saunders that day?

19 A. I don't recall.

20 Q. When was the first time you spoke to Mr.
21 Saunders concerning your viewing the videotapes at
22 AMSA?

23 A. I'm not sure when it was. I just basically
24 told him -- I know at one point after I viewed them,

1 It states Original Message?

61

2 A. Correct.

3 Q. Is that an e-mail from you?

4 A. Yes, it appears that way.

5 Q. Can you tell me what the initials BRI mean?

6 A. That simply means Bristol, Bristol County.

7 Q. It states, "Ms. Veenstra, check out the
8 Attleboro file. I think I had written a memo about
9 my visit." Is the written memo that you referred to
10 the document marked as Exhibit No. 1?

11 A. I think so.

12 Q. Any other memorandum?

13 A. I don't think I would --

14 Q. It says "Let me know." And then the next
15 sentence. "I also know that the facility still has
16 tapes of the incident." Did I read that correctly?

17 A. Um-hmm. Yes, you did.

18 Q. How did you know they did?

19 A. Must have been to my memory at that time.

20 Q. In June of 2002?

21 A. Yes.

22 Q. When you left the facility that day, did
23 they tell you they still had tapes or copies of the
24 tapes?

1 A. No. Like I said, even at that time in --
2 when I first learned that the tapes were missing, I
3 had no idea. Me saying that, "I also know that the
4 facility still has tapes about the incident," I'm
5 not sure what that's pertaining to. But like I
6 said, I don't remember ever specifically if I left
7 with the tapes, left some tapes there. I just don't
8 know.

9 Q. But you wouldn't have made the
10 representation that the facility still had tapes
11 unless you believed it was true?

12 MS. ROMANTZ: Objection.

13 A. Correct.

14 Q. Now, at this time were you in New Bedford,
15 that's where you were working at the time in June of
16 2002?

17 A. Yes.

18 Q. Was Mr. Saunders working in New Bedford at
19 that time?

20 A. I'm not sure. I know he was in Attleboro
21 for a period of time after I left, and then
22 ultimately he did go to New Bedford District Court,
23 but I'm not sure when.

24 Q. And how about Mr. Markey, was he in New

1 Q. Other than your conversation with Mr. Ardito
2 on that day, did you have any discussions with Mr.
3 Ardito concerning this case after that day?

4 A. No.

5 Q. Do you recall ever having any discussions
6 with Mr. Ardito in court where you asked him didn't
7 you see me leave with the tapes or anything like
8 that?

9 A. I'm sure I asked him, and he didn't
10 remember.

11 Q. Do you recall when that was?

12 A. Actually when I first heard of this, I
13 probably called him up at his office, and I remember
14 having a conversation with him about the tapes if I
15 remembered, and he had no idea either. It was too
16 long ago.

17 Q. So he couldn't tell you whether or not you
18 left with the tapes or not?

19 A. Yeah. He doesn't remember whether I had the
20 tapes in my hand, in my briefcase or if I left them
21 there. He had no idea.

22 Q. You had a briefcase with you that day?

23 A. Yes.

24 Q. Was it a rinky-dink briefcase like the one

1 I've got here or was it expandable and could hold
2 lots and lots of things?

3 A. It was a leather briefcase, black leather
4 briefcase. Nothing -- it wasn't expandable to a
5 huge point.

6 Q. When you arrived at AMSA, you didn't have
7 the tapes in a briefcase?

8 MS. ROMANTZ: Objection.

9 A. I don't think I did, no.

10 Q. Did you bring your briefcase in with you?

11 A. I think I did.

12 Q. And did you have it with you in the office?

13 A. Yes. I wouldn't have left it.

14 Q. And when you were in the video room, did you
15 have it with you there?

16 A. Yes.

17 Q. Where would it have been?

18 A. It would have been either to my right or to
19 my left.

20 Q. If Mr. Ardito was on your right, would it
21 have been in between you?

22 A. I don't recall.

23 Q. Was it in between you?

24 A. I don't recall.

1 around her body?

73

2 A. Yes.

3 Q. And did you see where his right hand was?

4 Was it placed somewhere on I guess that would be on
5 the right side of her body?

6 A. It wasn't actually touching from what I
7 remember. It was almost like guiding somebody
8 through. Okay.

9 Q. The hand wasn't actually touching or the
10 whole arm wasn't touching?

11 A. The whole arm wasn't touching nor the hand.
12 It was basically guiding somebody through a hallway.

13 Q. If Heather Kiernan described that walk down
14 the hallway as her being dragged by Mr. Ciambriello,
15 would you agree with that characterization?

16 A. No.

17 Q. And again, it was from the back so you
18 couldn't see any facial expressions?

19 A. Correct.

20 Q. And you said that you heard a voice say,
21 "I'm not going in there." Was that exactly the
22 words that you heard?

23 A. "I'm not going," yes.

24 Q. "I'm not going in there"?

1 A. Correct.

2 Q. Are you positive it was I'm not going in
3 there as opposed to I'm not going in there now let's
4 say?

5 MR. MCLEOD: Objection.

6 A. No. From what I recall, it was definitely
7 "I'm not going in there."

8 Q. And what was the response?

9 A. I did not hear any response from what I
10 remember.

11 Q. Was there a response?

12 A. I don't think so.

13 Q. I guess what I'm trying to figure out is.
14 Was that the only statement that was made or was
15 that simply a statement that somehow you were able
16 to hear but there was other communication between
17 the two of them that wasn't being picked up on the
18 audio?

19 A. It's really tough to say because the audio
20 was so bad. I heard that statement because it was
21 directly under the camera and it picked up that
22 statement as clear as a bell. Whether there was
23 something that was said at a point further from the
24 camera, there may have been. I did not hear it on

1 the tape.

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2 Q. And do you recall having a conversation with
3 David Ardito and the security consultant who was
4 there, you know, along the lines of did you hear
5 that?

6 A. Yeah.

7 Q. And was there acknowledgment on the part of
8 Mr. Ardito confirming that he also heard that?

9 A. Yes.

10 Q. And what about from the security consultant?

11 A. I'm not sure. There may have been.

12 Q. Did you rewind the tape and listen to it
13 again just to confirm that you heard it correctly?

14 A. I think we did.

15 Q. Do you recall how many times you listened to
16 it or rebacked up for that portion?

17 A. No more than once or twice.

18 Q. And as you sit here today, you have a clear
19 recollection that Mr. Ardito agreed with some
20 statement that you made summarizing what it was that
21 Heather Kiernan said --

22 A. Yes.

23 Q. -- or what -- it was a female voice?

24 A. Correct.

1 Knowing that they would be evidence in a criminal
2 matter, would it be your normal procedure to leave
3 that evidence somewhere, for use of a better word,
4 the chain of custody would be broken?

5 MR. MCLEOD: Objection.

6 A. Normally, no. Like I said, the only thing
7 that was different in this case is that at the time
8 we didn't have the capabilities of taping it. The
9 only reason I would have left the tapes there was
10 for them to make a copy of the tapes, something that
11 we could view.

12 Q. If you left the tapes there meaning so that
13 AMSA could make copies of the tapes?

14 A. Correct.

15 Q. Would there be any way if you left them
16 there to prevent AMSA or somebody who got ahold of
17 them from altering the tapes in any way?

18 MR. MCLEOD: Objection.

19 A. If I had left them there?

20 Q. Yes.

21 A. I'm sure anybody could do anything with
22 them.

23 Q. Or erase them?

24 A. Correct.

1 A. I believe so of this significance, right. 96

2 Q. At the time you took the tapes to AMSA, did
3 you have any understanding as to how the D.A.'s
4 office had gotten in possession of the tapes?

5 A. No.

6 Q. Were you aware of whether a receipt had been
7 issued by anyone to AMSA for those tapes?

8 A. No.

9 Q. You have no idea whether or not those tapes
10 were voluntarily turned over without a Subpoena?

11 A. No.

12 Q. In directing your attention to what was
13 marked as Exhibit 2. This is an e-mail that was
14 drafted, it appears to be drafted by you on Monday,
15 June 17th, 2002.

16 A. Correct.

17 Q. Do you have any reason to dispute that date?

18 A. No.

19 Q. It appears to be a true copy of your e-mail?

20 A. Could be, yes.

21 Q. And here we are sitting in June of 2005,
22 three years later?

23 A. Correct.

24 Q. Would it be fair to say that your memory in

1 June of 2002 was fresher than it is now? 97

2 A. Sure.

3 Q. Yes?

4 A. Yes.

5 Q. And I believe I asked you this before. When
6 you say "I also know that the facility still have
7 tapes of the incident," you base that on knowledge
8 that you had at the time?

9 A. Correct.

10 Q. Other than what you've testified that Mr.
11 Ardito mentioned about the tapes, did he say
12 anything else about what he was viewing on the tapes
13 during that viewing?

14 A. Nothing that I recall out of the ordinary.
15 Just basically what we were viewing, and making sure
16 that we both saw the same things.

17 Q. I know in your notes that are marked as
18 Exhibit 1 you didn't mention that the defendant's
19 sidearm was not in a holster, that it was tucked in
20 his pants.

21 A. Um-hmm.

22 Q. Is there any reason why that wasn't noted?

23 A. No.

24 Q. And you said it was in his left side?

1 On the bottom of the page it says CTS. Do you know
2 what CTS refers to? I'm referring to Exhibit 2.

3 A. I do not. I did not write that.

4 Q. And ATDC, do you know what that means?

5 A. No, I do not.

6 Q. Okay. Thanks. I have nothing further.

7 (Whereupon, at 12:08 p.m., the
8 deposition of Christopher Abreu adjourned.)

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ERRATA SHEET

108

2

I, CHRISTOPHR ABREU, do hereby certify that I have read the foregoing transcript of my testimony, and further certify that it is a true and accurate record of my testimony (with the exception of the corrections listed below):

3

Page	Line	Correction
4	_____	_____
5	_____	_____
6	_____	_____
7	_____	_____
8	_____	_____
9	_____	_____
10	_____	_____
11	_____	_____
12	_____	_____
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15	_____	_____
16	_____	_____
17	_____	_____
18	_____	_____
19		
20	Signed under the pains and penalties of perjury this	
21	day of _____, 2005	
22		
23		
24	CHRISTOPHER ABREU	

22

23

24

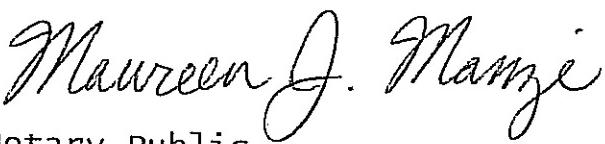
CHRISTOPHER ABREU

1 COMMONWEALTH OF MASSACHUSETTS
2 MIDDLESEX, ss.

3 I, Maureen J. Manzi, Certified Shorthand
4 Reporter and Notary Public, CSR #135093, duly
5 commissioned and qualified in and for the
6 Commonwealth of Massachusetts, do hereby certify
7 that there came before me on the 2nd day of June,
8 2005 the person hereinbefore named, who was by me
9 duly sworn to testify to the truth and nothing but
10 the truth of their knowledge touching and concerning
11 the matters in controversy in this cause; that they
12 were thereupon examined upon their oath, and their
13 examination reduced to typewriting under my
14 direction and that the deposition is a true record
15 of the testimony given by the deponent.

16 In witness whereof, I have hereunto set my
17 hand and affixed my seal this 17th day of June,
18 2005.

19
20
21
22
23
24



Maureen J. Manzi

Notary Public

My Commission Expires:

January 17, 2008

CERTIFIED ORIGINAL
LEGALINK BOSTON

Exhibit E

1 volume: I
2 Pages: 1-182
3 Exhibits: 1-5

4 UNITED STATES DISTRICT COURT
5 DISTRICT OF MASSACHUSETTS

6 - - - - - x

7 HEATHER KIERNAN,

8 Plaintiff,

9 v. CA No. 10131MLW

10 ARMORED MOTOR SERVICES OF AMERICA, INC.

11 And FRANCESCO CIAMBRIELLO,

12 Defendants.

13 - - - - - x

14
15 DEPOSITION OF FRANCESCO CIAMBRIELLO

16 Thursday, April 7, 2005

17 10:00 a.m.

18 McLeod Law Offices, P.C.

19 77 Franklin Street

20 Boston, Massachusetts 02110

22 Reporter: Carol A. Pagliaro, CSR/RPR/RMR

23

24

CERTIFIED ORIGINAL
LEGALINK BOSTON

1 A P P E A R A N C E S:

2

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21 Counsel for the Defendant

22 Francesco Ciambriello

23

24

1

I N D E X

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EXAMINATION OF:

PAGE

3

FRANCESCO CIAMBRIELLO

4

By Atty. McLeod

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E X H I B I T S

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NO.

PAGE

12

1 Copy of the application submitted to

13

AMSA

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14

2 Introductory Period Memo

48

15

3 Smoking Policy

53

16

4 Sexual Harassment Policy

56

17

5 Attleboro Police Department Statement

18

of Rights

155

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*Original exhibits attached to original
transcript.

23

24

1 PROCEEDINGS

2 Stipulation

3 It is stipulated by and between counsel
4 for the respective parties that Motions to strike
5 and objections, except those as to form, are
6 reserved until the time of trial. It is further
7 stipulated that the witness may sign the deposition
8 under the pains and penalties of perjury, rather
9 than before a notary public, within 30 days of
10 receipt by his attorney.

11 FRANCESCO CIAMBRIELLO

12 a witness called for examination by counsel for the
13 Plaintiff, being first duly sworn, was examined and
14 testified as follows:

15 DIRECT EXAMINATION

16 BY ATTY. MCLEOD:

17 Q. Could state your name for the record,
18 please?

19 A. Francesco Ciambriello.

20 Q. And because I have seen it spelled
21 differently, and it could be my fault, too, could
22 you please spell your first name for me?

23 A. The first name is F R A N C -- S C E -- S
24 O -- C O, something like...

1 husband?

69

2 A. To me, yes. And she said she wasn't happy
3 and he never make her happy.

4 Q. Anything else?

5 A. And she want a divorce, and she goes over to
6 Jason Khoury, tell him all the time she want a
7 divorce.

8 Q. She did, she told Jason Khoury she wanted a
9 divorce?

10 A. She wanted a divorce because she no happy,
11 husband no take care of her.

12 Q. Was there anything else that she discussed
13 with you about her marriage?

14 A. Yes.

15 Q. What else?

16 A. He watch porn all the time and then he jerk
17 off.

18 Q. So she talked about him watching pornography
19 and masturbating?

20 A. Yes, and he no pay attention to her.

21 Q. Did she ever talk about her son?

22 A. Yes.

23 Q. What did she say about him?

24 A. She asked me a couple of times if she has a

1 divorce if she can take the baby.

70

2 Q. Anything else?

3 A. She tell me she smoke pot, you know.

4 Q. Was there anything else that Heather
5 discussed about her personal life with you?

6 A. No.

7 Q. Did you know how old her son was?

8 A. No.

9 Q. Did she talk about anything about her
10 husband not working?

11 A. Yes.

12 Q. What did she say about that?

13 A. She said her husband he doesn't have a job,
14 he no work, he is home all the time, he is a lazy
15 bum, he can't find a job.

16 Q. Did she say anything about why she was
17 working?

18 A. No.

19 Q. Did she ever say anything about what it was
20 like to have a baby?

21 A. No, no.

22 Q. Did you two ever have any physical contact
23 prior to May 19, 2001?

24 A. Physical contact, yes.

1 Q. And you reached around the front?

2 A. Yes.

3 Q. And then what happened?

4 A. She say, Keep going, I'm feeling good. I
5 said, What do you mean keep going? She say, You
6 know what you are doing.

7 Q. Was she breathing heavier?

8 A. Huh?

9 Q. Was her breathing heavier?

10 A. Normal.

11 Q. Did she attempt to pull away from you?

12 A. No.

13 Q. And she said keep going?

14 A. Yes.

15 Q. And what was the next thing that happened?

16 A. We decide to go to -- get up, go to Jason's
17 office. We walk through the hallway, and went in --

18 Q. Stop right there. I'll go back to that, but
19 when you say we decided, what do you mean?

20 A. We both decide.

21 Q. How was the decision made?

22 A. Excuse me?

23 Q. How was the decision made?

24 A. We go to Jason's office.

1 Q. Who suggested it?

2 A. We both said same time.

3 Q. So you both decided to go into Jason's
4 office?

5 A. Yes.

6 Q. You both said it at the same time?

7 A. Yes.

8 Q. Were you both looking at each other when you
9 said it?

10 A. Yes, yes, we said we go to Jason's office.

11 Q. Now let me ask you this, the video room,
12 that's where all the video equipment is that has the
13 tapes of the surveillance?

14 A. Where?

15 Q. I don't know, that's what I'm asking you.

16 A. One more time. I don't catch you; you go
17 too fast.

18 Q. I'm sorry. The video room, was there a room
19 that had the video equipment that had the tapes of
20 the surveillance of, like, the outside and the
21 garage?

22 A. Mm-mm.

23 Q. There was?

24 A. There was a separate room.

1 Q. The exterior cameras, did they move at all?

2 A. I don't know. I don't know.

3 Q. As part of your responsibilities as weekend
4 supervisor, you wouldn't be monitoring the videos of
5 the surveillance, would you, or would you?

6 A. Excuse me?

7 Q. Sorry. I'll strike it. As part of your
8 duties would you be monitoring what was coming in on
9 the security cameras? Would you be monitoring --
10 looking at videos, a TV that had the video of the --

11 A. You mean look at the screen?

12 Q. Yes.

13 A. Yes.

14 Q. Was that a split screen or was it one area?

15 A. One area, just outside. Just outside the
16 building you can look. That's it.

17 Q. How many cameras were in the room that you
18 and Heather were in?

19 A. I think 2, 3.

20 ATTY. ROMANTZ: Objection.

21 Q. Sorry, you said two or three?

22 A. At least 2, 3 camera.

23 Q. So while you were rubbing her shoulders and
24 her back, you knew at least 2 or 3 cameras were

1 looking at you?

2 ATTY. ROMANTZ: Objection.

3 A. Yes.

4 Q. That didn't bother you?

5 A. No.

6 Q. And when you were rubbing her breasts over
7 her shirt, the fact that you were being videotaped
8 didn't bother you?

9 ATTY. ROMANTZ: Objection.

10 A. No.

11 Q. At that time you were married, correct?

12 A. Yes.

13 Q. Were you wearing a wedding band at the time?

14 A. Yes.

15 Q. And can I ask you, please, why you were
16 rubbing the breasts, over her shirt, of an employee
17 while you were a weekend supervisor as a married
18 man? Why were you doing that?

19 ATTY. ROMANTZ: Objection.

20 A. She asked me to do it.

21 Q. And you didn't refuse?

22 A. No.

23 Q. And the fact you are a married man didn't
24 factor into your decision-making process at all?

1 A. Jason's office.

104

2 Q. Where was she when she said that?

3 A. When we get up.

4 Q. In the office, in that check counter room?

5 A. Check-in counter.

6 Q. But you had testified you had both said at
7 the same time --

8 A. Yes, yes.

9 Q. -- you had both said at the same time,
10 Let's go into Jason's office?

11 A. Yes.

12 Q. So was it before or after that that she
13 said, Not right now?

14 A. First we say we go to Jason's office.

15 Q. You both do?

16 A. We both do, so we said that, and then after
17 a second she say, oh, no right now, and then she
18 changed her mind again.

19 Q. How much time had elapsed before her saying
20 no right now and her, as you have testified,
21 changing her mind?

22 A. Maybe in a minute.

23 Q. Did she do anything during that minute; was
24 she working, doing anything?

1 A. No, we didn't do nothing. It was nothing.
2 we just sit down and do nothing. We get up, we
3 supposed to go, then she said, No right now, then
4 she change her mind, we go in. That's how it
5 happening.

6 Q. Then so you unlocked --

7 A. -- the door.

8 Q. -- Jason's office?

9 A. -- office.

10 Q. And the keys, did you keep them in your
11 pocket or was it like on a key belt thing?

12 A. Like it was in a key ring.

13 Q. That was on the belt? Was it on like your
14 belt or by the --

15 A. Snap.

16 Q. Snap. Those are the company keys?

17 A. Yes.

18 Q. And what hand -- did you use both hands to
19 unlock the door?

20 A. I use right hand unlock the door.

21 Q. Where was your left hand?

22 A. My hand was somewhere on myself.

23 Q. So did you take it off of Heather Kiernan?

24 A. I only had one hands on Heather Kiernan all

1 Q. Did you not think that was inappropriate?

2 ATTY. ROMANTZ: Objection.

3 A. No.

4 Q. Why not?

5 A. Because she was no happy home. Her husband
6 no made her happy. She always was upset. She
7 didn't want to be with her husband, so I no have no
8 problem. Also it wasn't just my idea, it was both
9 my idea.

10 Q. So you were talking about your own sexual
11 experiences as well?

12 A. No, I never talk. No, no, no.

13 Q. You weren't talking about your marital
14 sexual issues or experiences, were you --

15 ATTY. ROMANTZ: Objection.

16 A. No.

17 Q. -- with Heather.

18 You say that you read Exhibit 3 --
19 sorry, Exhibit 4, and if I could direct your
20 attention towards the bottom of the page where it
21 says Confidential, although there is this certain --
22 it's this one -- there is a number of bulleted
23 points, and I'm just directing you beginning where
24 it says, while; while it is not possible to list all

1 of those circumstances which constitute sexual
2 harassment, the following are some examples, and
3 then it lists several examples, and the one example,
4 the one that is second from the bottom, is
5 discussion of one's sexual activities; do you see
6 that?

7 A. Yes.

8 Q. So it was your testimony that Heather was
9 discussing her sexual activities about her husband,
10 right?

11 ATTY. ROMANTZ: Objection.

12 A. Correct.

13 Q. And you, when she was having these
14 discussions with you, you were acting as her
15 supervisor, correct?

16 ATTY. ROMANTZ: Objection.

17 A. Yes.

18 Q. And yet you took no action at all to suggest
19 that her discussions violated that policy that you
20 signed off that is marked as Exhibit 4?

21 ATTY. ROMANTZ: Objection.

22 A. I think, I'm no remember too sure, but a
23 couple of times I spoke to my night supervisor, his
24 name Chris, I don't know his last name, to talk to

1 Jason, because Heather, she had a mouth full.

130

2 Q. I don't know what you mean by mouth full.

3 A. She was tell all these things, that's mean a
4 mouthful, to me, yes.

5 Q. When did you have that discussion?

6 A. That was about 2, 3 weeks before it
7 happened, a couple of weeks before it happened.

8 Q. What prompted you to have that discussion?

9 A. I don't understand that.

10 Q. Why did you talk to Chris about him talking
11 to Jason about Heather's behavior and what she was
12 talking about?

13 A. Why I talk to Jason? Because it was not
14 right for me at one certain point to hear all this
15 stuff.

16 ATTY. MCLEOD: Could you read that
17 answer back, please.

18 (Answer read.)

19 Q. So you spoke to Chris, he was your
20 supervisor during the week, and you asked him to
21 speak to Jason?

22 A. Yes.

23 Q. Do you know if he did?

24 A. Well, I don't have no idea.

1 Q. But, nevertheless, at that time you were
2 concerned about the things Heather was talking
3 about?

4 ATTY. ROMANTZ: Objection.

5 A. No really; I was no concern about it.

6 Q. Okay.

7 A. I was no concern about it. You know, I
8 figure we were friends and she needed somebody to
9 talk. That's what I assume.

10 Q. I'm confused then. If you weren't concerned
11 about it, then why did you report it to Chris?

12 A. (No verbal response.)

13 Q. Sorry.

14 A. I no was concern. I just tell Chris to --
15 you know, what mouth she had.

16 Q. But why did you tell Chris is my question.
17 That's what I'm trying to get to.

18 A. Why?

19 Q. Mm-mm.

20 A. I don't know about why I tell him.

21 Q. You don't know why?

22 A. No.

23 Q. But you weren't concerned?

24 A. No.

1 Q. But did you want it to stop? 132

2 A. Yes.

3 Q. You did?

4 A. Yes.

5 Q. Is that why you went to Chris to talk to him
6 about it, because you wanted it to stop?

7 A. No, I wanted Heather have a little bit of
8 clean mouth.

9 Q. You wanted her to stop talking about her
10 husband?

11 A. Yes.

12 Q. Was there anything else that you wanted
13 Heather to stop doing which is why you went to
14 Chris?

15 A. That's the only reason I went to Chris.

16 Q. Because you wanted her to stop talking about
17 her husband?

18 A. Yes.

19 Q. Was it about her husband in general or was
20 it just about the sexual things that she was talking
21 about with you that you wanted to stop?

22 A. In general.

23 Q. In general. You wanted her to stop in
24 general talking about her husband. So if she came

1 in and said something fairly innocent about her
2 husband, such as my husband bought me this sweater,
3 that is not something you cared to hear about?

4 A. No, that's a different story with the
5 sweater with other activity going on. That like --

6 Q. What I had ask you was, Did you want her to
7 stop talking about her husband in general or just
8 stop talking about her husband with regard to his
9 sexual activities, and your response was in general.

10 A. Yes, meaning general what?

11 Q. Anything, or just one issue, the sexual
12 activity such as before we were talking --

13 A. No, in general. I don't want to hear her
14 outside problem.

15 Q. On that morning -- not that morning, but on
16 that day, May 19, when she came into the office --
17 when she came into AMSA, did she have anything to
18 say about her husband?

19 A. Yes. She say he was an asshole, all of this
20 stuff, nothing really new, same record over and over
21 again.

22 Q. And that came approximately a couple of
23 weeks after you had talked to Chris hoping that
24 would stop, right?

133

1 A. Yes.

2 Q. How did you feel about that?

3 A. How did I feel about that?

4 Q. Mm-mm.

5 A. If I told him something once, I'd have to
6 tell him again.

7 Q. Before Heather arrived that day did you have
8 any knowledge as to whether or not Chris had spoken
9 to Heather or Jason -- let me finish -- or whether
10 or not Jason spoke to Heather about what you had
11 spoken to Chris about?

12 ATTY. ROMANTZ: Objection.

13 A. I never heard anything.

14 Q. Did you ever meet Heather's husband?

15 A. No.

16 Q. Did you form any opinions about Heather's
17 husband?

18 A. No.

19 Q. So let me ask, Did you think that Heather's
20 comments about her husband weren't appropriate for
21 the workplace?

22 A. Yes.

23 Q. You didn't think they were appropriate?

24 A. Yes, you could say that.

1 activity. There was her and me; both were. She
2 want to do that, she want to be -- I assume, I
3 understand, probably she started the shoulder for go
4 some other place.

5 Q. And as I recall, because as you are
6 testifying, she wanted to go in that room with you,
7 right?

8 A. Yes.

9 Q. And at no time did she say to you I don't
10 want to go in there?

11 ATTY. ROMANTZ: Objection.

12 A. No.

13 Q. If she had said to you, I don't want to go
14 in there, would it have been appropriate for you to
15 go into that room with her?

16 ATTY. ROMANTZ: Objection.

17 A. No.

18 Q. When you are at AMSA you can't smoke inside?

19 A. Some people smoke in the garage, the break
20 room, some people they go outside. It depends.

21 Q. But if you were to go outside the building
22 you need to secure the vault; is that what you need
23 to do?

24 A. The vault is already secure. The part of

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1 A. No.

2 ATTY. MCLEOD: I don't have any other
3 questions at this time. Based on the issues with
4 the joint defense agreement that has just been
5 raised, I will suspend, in the event that I'm able
6 to get further inquiry on the meeting that took
7 place yesterday, but other than that I think we are
8 done.

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1 C E R T I F I C A T E

2 I, FRANCESCO CAMBRIELLO, do hereby certify that I
3 have read the foregoing transcript of my testimony,
4 and further certify that said transcript is a true
5 and accurate record of said testimony (with the
6 exception of the following corrections listed
7 below):

8 Page	Line	Correction/Reason
9 _____	_____	_____
10 _____	_____	_____
11 _____	_____	_____
12 _____	_____	_____
13 _____	_____	_____
14 _____	_____	_____
15 _____	_____	_____
16 _____	_____	_____

17
18
19 Signed under the pains and penalties of perjury
20 this _____ day of _____, 2005.

21
22 _____
23 FRANCESCO CAMBRIELLO
24

1 Commonwealth of Massachusetts
2 Suffolk, ss.

3 I, Carol A. Pagliaro, Registered Professional
4 Reporter and Notary Public in and for the
5 Commonwealth of Massachusetts, do hereby certify
6 that FRANCESCO CAMBRIELLO, the witness whose
7 deposition is hereinbefore set forth, was duly sworn
8 by me and that such deposition is a true record of
9 the testimony given by the witness to the best of my
10 skill and ability.

11 I further certify that I am neither related to,
12 nor employed by, any of the parties in or counsel to
13 this action, nor am I financially interested in the
14 outcome of this action.

15 In witness whereof, I have hereunto set my hand
16 and seal this 25th day of April, 2005.

17

18

19

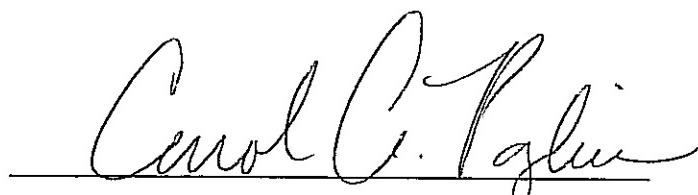
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CERTIFIED ORIGINAL
LEGALINK BOSTON

Carol A. Pagliaro, RMR

Notary Public

CSR No. 123293

My commission expires April 28, 2011

Exhibit F

Volume: 1
Pages: 83
Exhibits: 3

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, SS.
No. BRCR2002-0773

SUPERIOR COURT

COMMONWEALTH OF MASSACHUSETTS

vs.

FRANCESCO CIAMBRIELLO

BEFORE: Burnes, J.

Motion to Dismiss

APPEARANCES:

Jeanne M. Veenstra, Assistant District Attorney,
Bristol District, 888 Purchase Street, New Bedford,
Massachusetts 02740, for the Commonwealth.

David R. Ardito, Esq., 228 County Street,
Attleboro, Massachusetts 02730, for the Defendant.

New Bedford Superior Courthouse
New Bedford, Massachusetts
August 25, 2003

LORI R. SAULNIER
Official Court Reporter
Certified Shorthand Reporter

INDEX

<u>Witnesses</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
John Otrando by Ms. Veenstra: by Mr. Ardito:	9	23	32	34
Christopher Markey by Ms. Veenstra: by Mr. Ardito:	35	42		
Christopher Abreu by Ms. Veenstra: by Mr. Ardito:	43	53		
Russell Castro by Ms. Veenstra: by Mr. Ardito:	55	61	63	63
Louis Pacheco by Ms. Veenstra: by Mr. Ardito:	64	71		

EXHIBITS

No.	Description	Iden.	Evid.
1	Receipt		22
2	Tape		30
3	Affidavit		43

3

PROCEEDINGS

THE CLERK: #16 on the list, Francesco Ciambriello with Mr. Ardito, Ms. Veenstra.

THE COURT: Yes. Good morning.

MS. VEENSTRA: Good morning.

MR. ARDITO: Good morning.

THE COURT: Mr. Ardito, this is your motion to dismiss?

MR. ARDITO: Yes, it is, judge.

THE COURT: Do either of you want to be heard in opening? I've read both the motion and the opposition. Do I need to know anything more before you start?

MR. ARDITO: I don't believe so, your Honor.

THE COURT: Okay. Why don't we --

MS. VEENSTRA: Judge, I just suggest I think that, as the Court knows, the balancing test is going to require the Court to determine the culpability of the Commonwealth, and I would expect to elicit some evidence on that. It also needs to determine the potential exculpatory value and the nature of that evidence and the materiality of it. So, I would expect to offer testimony on those two prongs, and then obviously

it will be up to the Court to determine what the potential prejudice to the defendant will be; and that obviously will be arguments of counsel.

THE COURT: Right. I also notice, Ms. Veenstra, there is a letter from you to Mr. Ardito in here saying that there were three tapes that were retrieved?

MS. VEENSTRA: Yes, your Honor.

THE COURT: I'd be interested in knowing -- and I'm sure you will elicit this -- how many there were to start with, what these tapes covered, what they --

MS. VEENSTRA: Absolutely, your Honor. I think that the number of witnesses will be able to give your Honor the best picture possible of what was depicted, what happened to the tapes, how many there were initially, what happened to them, what the Commonwealth has retained possession of, and what those tapes depicted.

THE COURT: Okay. All right.

MR. ARDITO: Your Honor, may I use the podium?

THE COURT: Yes, certainly.

MR. ARDITO: Your Honor, as stated in my brief, we believe that the lost tapes are

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paramount to our defense. Reason being is if you just look quickly -- and I know your Honor hasn't had time, but there's certain things that were elicited in the grand jury indictment were actually shown on those tapes, because I witnessed the tapes with one of counsel's witnesses. For example, Officer Otrando, I believe -- and my sister will probably elicit that -- says that in interviewing one of the witnesses, a Ms. Parrott, Ms. Parrott in her sworn statement says that the client was dragged into the room. It's right in the minutes of the grand jury. I've seen the tape. They walked into the room. We have a copy of that tape of them walking. Officer Otrando says when asked whether or not my client's left hand was free, he says he did not have a good look. We have a tape today, and you can see them both walking down the aisle toward where this alleged incident took place. Well, certainly if a jury was to view the entire tape the way I viewed the tape, it certainly contradicts everything that was mentioned not only in the grand jury indictment, but the police reports.

For example, there's a clear picture --

this is not a contradiction, but it certainly goes to the state of mind. There was a clear picture of the alleged victim standing outside the building smoking a cigarette with a friend that she called up to take her over a bottle of wine. I think that picture in itself -- this is hours later -- sends a message, and I need that message to be shown to a jury.

This is a consent defense. We're saying that they walked down the aisle, went into the room for five minutes, came out. There was a picture of her very clear walking out of that room heading towards the ladies room. I seen it. There was no distress. There was no putting herself together. There was none of that. I need to show that to a jury. That's the whole case. If I was to show this tape to a jury, I probably wouldn't even have to cross-examine witnesses. That's how telling this tape was. And for the Commonwealth not to have the tape today puts us in a terrible position because now we have testimony that's going to be very very hard to cross-examine.

With the tape itself, it clearly shows that if anything at all was done -- and that was

out of the view of the camera. And according to Officer Otrando, he said he timed it. It was about five minutes that they were in this room. It clearly shows that there was no distress, no one was in any pain.

There's another part of the video that shows them having a coke after. Mr. Ciambriello asked Ms. Kiernan if she wanted something to drink. They were in a waiting room. All of this, you know, hours and hours and hours of tape that are missing right now are paramount to our defense. To allow this case to go on without this tape, it certainly prejudices my client.

You know, I don't want to recite case law, in this case what was said or that case. You have that in front of you. But I seen this tape. And from the onset I believe that if I had this tape, there wouldn't have been a problem. Reason why we couldn't get the tape is it was shot over some type of security system where there was several different cameras taking place at the same time, and we needed -- it had to be seen at AMSA the place where the alleged incident took place; and that's where myself and at that time Assistant District Attorney Saunders went to

go view the tape. We only stood there for a couple of hours, and what we saw was enough to let me believe this is paramount. This is what I need to show a jury. This is how my client gets exonerated of these indictments.

The only thing I have today is a five -- two minute walk showing Mr. Ciambriello and the victim walking to the alleged place of the incident, which I'm sure we're going to show your Honor. And even that video contradicts testimony in the grand jury report. Without that video, your Honor, we are extremely prejudiced, extremely prejudiced. It just -- we just need it. It showed other armored personnel coming in. One particular personnel truck was very -- came in after the alleged incident. So, if Ms. Kiernan was really in distress, she was two feet away. The camera showed her two feet away from this armored guard.

THE COURT: Well, I assume that I'm going to hear from him.

MR. ARDITO: You are. You are. But I think the picture itself -- the day of reality TV, the picture itself is what I need a jury to see. That's gone. I mean when I cross-examine

1 Ms. Kiernan and I asked her hypothetically, you
 2 know, why didn't you ask this person for help, I
 3 don't know what her answer's going to be. But if
 4 I could show that on television, if I could show
 5 a jury here's this man, he's armed, here's Ms.
 6 Kiernan, there's Mr. Ciambriello, and ask that
 7 question then --

8 THE COURT: Okay. I think you've made
 9 a showing --

10 MR. ARDITO: Thank you, judge.

11 THE COURT: -- that you need it.

12 MR. ARDITO: Desperately.

13 THE COURT: Let's see what the
 14 Commonwealth has to show why you don't.

15 MS. VEENSTRA: The Commonwealth would
 16 call Sergeant John Otrando.

17 THE COURT: Okay.

18 JOHN OTRANDO, Sworn

19 THE WITNESS: Morning, your Honor.

20 DIRECT EXAMINATION

21 BY MS. VEENSTRA:

22 Q. Would you please introduce yourself for the
 23 record.

24 A. Yes. My name's John Otrando. I'm a sergeant
 25 with the Attleboro Police Department.

1 THE COURT: You can sit down.

2 Q. How long have you been with the Attleboro Police
 3 Department?

4 A. Fifteen years.

5 Q. Sergeant Otrando, I'd like to direct your
 6 attention to the year 2001, in the month of May,
 7 and ask you whether you began an investigation
 8 with regard to an alleged rape at an armored car
 9 facility?

10 A. Yes, I was involved in that.

11 Q. And what is the name of that facility?

12 A. It's AMSA, Armored Motor Services of America, I
 13 believe.

14 Q. And directing your attention to the early morning
 15 hours of May 20th in the year 2001, did you go to
 16 that location in furtherance of your
 17 investigation?

18 A. Yes, I did.

19 Q. And do you know who you were with or who was
 20 present at that location when you went there?

21 A. Yes. I believe it was Officer Castro, Officer
 22 Larsen, and a civilian from AMSA Edward O'Brien.
 23 There was also another gentleman there. His name
 24 escapes me at this time, from AMSA.

25 Q. And would that name be contained in your police

1 report, detective?

2 A. It may be.

3 MS. VEENSTRA: Your Honor, may he
 4 refresh his memory?

5 THE COURT: Yes.

6 THE WITNESS: It may be contained in
 7 the initial incident report.

8 Q. I direct your attention to Page 2 approximately
 9 halfway down. A little more than halfway down.

10 A. Jason Khoury.

11 Q. And that would be K-H-O-U-R-Y?

12 A. That's correct.

13 Q. Did you and other members of your police
 14 department have an opportunity to take a look at
 15 that facility at that time?

16 A. Yes, we did.

17 Q. And did you have an opportunity at that time to
 18 view some surveillance equipment?

19 A. Yes, we did.

20 Q. As best you can, can you describe the nature of
 21 that equipment and that surveillance system for
 22 the Court?

23 A. It's a small room by the manager's room. There
 24 are various screens in front of you, monitors,
 25 and there's like a VCR type system. I believe it

1 contains six VCRs. The system they told me was a
 2 multiplex tape system where on each screen you
 3 would see nine frames, and they informed me that
 4 the entire facility was monitored by video
 5 camera, and there's also recorded audio.

6 Q. So, if I understand you correctly, there are a
 7 number of screens, and within those screens there
 8 are a number of frames?

9 A. That's correct.

10 Q. And you said that the entire facility is
 11 monitored. Is the entire facility monitored?

12 A. Everything except for the supervisor's office
 13 which was informed to me to be Jason Khoury's
 14 office.

15 Q. And where specifically within AMSA did the
 16 alleged rape take place?

17 A. Inside Jason Khoury's office.

18 Q. Did you have an opportunity while visiting that
 19 facility to view what was depicted on those
 20 surveillance tapes?

21 A. Yes, I did.

22 Q. Could you describe what you saw to the Court?

23 A. One portion -- I observed one portion of the tape
 24 shows Heather Kiernan and Francesco --

25 Q. And would that be the alleged victim?

1 A. Yes. The alleged victim Heather Kiernan,
 2 Francesco Ciambriello, and another female
 3 identified later as Christina Parrott outside the
 4 facility, appeared to be smoking cigarettes
 5 outside.

6 THE COURT: All three of them outside?

7 THE WITNESS: All three were outside,
 8 yes.

9 Q. And did you hear any audio, specifically with
 10 regard to what was depicted outside?

11 A. No, I did not.

12 Q. Could you, sergeant, see any facial expressions
 13 on any one of these three people that were
 14 outside?

15 A. No, I could not.

16 Q. Did you make any other observations of what was
 17 depicted on the tapes?

18 A. Yes. There was another section where it showed
 19 Heather Kiernan at her desk, and Francesco
 20 Ciambriello was speaking with her by her desk.
 21 They appeared to be in some sort of
 22 conversation. He was in the room by her desk.

23 Q. And when you said that they appeared to be
 24 involved in some sort of conversation, could you
 25 hear what was said?

1 A. I could not make out what was said, no.

2 Q. And again, were you able to determine any facial
 3 expressions that stood out to you?

4 A. No, I could not.

5 Q. Did you make any other observations of what was
 6 depicted on the tapes?

7 A. Yes. There was another section of the tape where
 8 Francesco Ciambriello was walking side by side
 9 with the victim Heather Kiernan. He was to her
 10 left. He had his right arm around her -- the
 11 waist, buttocks area. His left arm I could not
 12 see where it was. I know it wasn't down by his
 13 side. It was into his right side, and he was
 14 walking along with her through what they told me
 15 was the money room.

16 Q. And you said that his left hand was where?

17 A. His left hand was on the right side of his body.
 18 It wasn't down by his side. It was like this,
 19 but I couldn't see where it was. And his right
 20 hand was around her waist, buttocks area.

21 Q. As best you can, describe the angle of that view
 22 of them walking down the corridor. Would that be
 23 a view of their backs, their sides, their
 24 fronts? Could you describe that to the Court?

25 A. Their left side. I had the view of their left

1 side. If the camera was situated here higher up
 2 on the wall, it was coming down. So, I could see
 3 his left side very clearly, and the tape only
 4 lasted a few seconds.

5 Q. Did you hear any audio in viewing that portion of
 6 the tape?

7 A. No, I did not.

8 Q. At some later time -- and I'll get to that more
 9 completely later, but at some later time did you
 10 have some communication with Edward O'Brien
 11 regarding that audio?

12 A. Yes, I did.

13 Q. Can you describe that to the Court?

14 A. At this time when I viewed the tapes, there was a
 15 humming noise coming from the audio where a lot
 16 of -- there was feedback or whatever you would
 17 call it. So, a lot of the audio was inaudible.
 18 When the tapes were viewed later, I had a chance
 19 to speak with Edward O'Brien who was present at
 20 that second viewing. He informed me that that
 21 feedback or that humming noise was gone and that
 22 he could hear some of the statements that were
 23 made by the victim.

24 Q. Okay. Do you know what he said he heard on that
 25 tape?

1 MR. ARDITO: Objection, your Honor.

2 Hearsay.

3 THE COURT: Well, I think she can have
 4 it on this for this motion.

5 MR. ARDITO: For the record.

6 Q. Did he tell you what he heard on that tape?

7 A. Yes. He informed me that he could hear Heather
 8 Kiernan state, "No. No. I don't want to go back
 9 there."

10 Q. But you didn't hear that?

11 A. No, I did not.

12 Q. And you were not present at that second viewing;
 13 is that correct?

14 A. That's correct.

15 Q. Now, you said that you saw them coming down the
 16 hallway. Did you see where they went when they
 17 went down the hallway?

18 A. Yes. After they went through the money room,
 19 they went down a longer hallway. They went
 20 through the money room and took a right down a
 21 long hallway. Then I observed them from a
 22 different camera that again was positioned -- say
 23 it was up here. They took a right, and the
 24 camera was at their back leading down to Jason
 25 Khoury the supervisor's office.

1 Q. And what happened once they got to that office?
 2 Did you see --
 3 THE COURT: Let me just interrupt. You
 4 said you were looking at them from the back?
 5 THE WITNESS: Yes, your Honor.
 6 THE COURT: Okay.
 7 Q. Let me ask you while looking at them from the
 8 back, did you make any observations of Mr.
 9 Ciambriello's hands?
 10 A. He had his arm around the victim in the same
 11 manner I mentioned before, the waist, buttocks
 12 area.
 13 Q. What hand would that be?
 14 A. His right hand.
 15 Q. And when you say waist, buttocks area, sir, is it
 16 low on the buttocks, or is it in the waist?
 17 A. It's -- well, I'd say the hip area. Yes, right
 18 around that area. To the back.
 19 Q. And did you see what happened once they got to
 20 that door?
 21 A. I observed them enter the supervisor's office.
 22 Q. Who went in first; do you remember?
 23 A. I believe it was Heather Kiernan.
 24 Q. And did you continue -- did that door close?
 25 A. Yes, it did.

1 Q. Did you continue to watch?
 2 A. Yes, I did.
 3 Q. And at some point did that door open?
 4 A. Yes, it did.
 5 Q. Can you estimate for the Court about how much
 6 time elapsed while that door was closed?
 7 A. I'd have to say several minutes.
 8 Q. And when you say several minutes, five, ten,
 9 fifteen? As best you can estimate.
 10 A. Estimate, five.
 11 Q. And when you see that door open, what else did
 12 you see?
 13 A. I observed Heather Kiernan exit and turn left.
 14 Q. And do you know where she went to?
 15 A. From later speaking with her, she informed me
 16 that she had gone to the female's bathroom.
 17 Q. Did you see her go to the bathroom?
 18 A. No. I just observed her exit and head in that
 19 general direction.
 20 Q. Did you make any observations of her demeanor or
 21 her facial expression as she exited that office?
 22 A. No, I did not.
 23 Q. Was the angle such that you would see the front
 24 of her?
 25 A. Yes.

19

1 Q. Now, is that, sergeant, basically what you saw
 2 depicted on those tapes that evening initially
 3 starting your investigation?
 4 A. That is correct.
 5 Q. That evening did you seize some video tapes?
 6 A. Yes, I did.
 7 Q. How many video tapes did you seize on May 20th in
 8 the early morning hours?
 9 A. Three.
 10 Q. And were those labeled in any way?
 11 A. Yes, they were.
 12 Q. How were they labeled?
 13 A. D -- the letter D, E, and F.
 14 Q. And at some point did you have some conversation
 15 with an assistant district attorney Christopher
 16 Markey?
 17 A. Yes, I did.
 18 Q. And did some of that conversation revolve around
 19 those video tapes that you seized?
 20 A. Yes.
 21 Q. And were some arrangements made for the viewing
 22 of those video tapes?
 23 A. Yes.
 24 Q. Can you describe what happened to the Court?
 25 A. ADA Markey asked me if he could get those tapes

20

1 in order to view them to make copies of them to
 2 further the case. So, my recollection is that I
 3 brought them up to New Bedford and dropped them
 4 off to ADA Markey.
 5 Q. And that would be three tapes?
 6 A. Yes.
 7 Q. And at some point did you have some conversation
 8 with Assistant District Attorney Markey to
 9 retrieve other tapes?
 10 A. Yes.
 11 Q. And what other tapes were you asked to retrieve?
 12 A. The three remaining tapes that were left in
 13 AMSA's possession.
 14 Q. And how were those labeled?
 15 A. A, B, and C.
 16 Q. Okay. Do you know if this was before or after
 17 you turned over the original tapes labeled D, E,
 18 and F?
 19 A. I'm not sure.
 20 Q. But you're sure that you gave him tapes D, E, and
 21 F?
 22 A. Yes, I am sure about that.
 23 Q. And you were instructed to go and retrieve A, B,
 24 and C?
 25 A. That is correct. He gave me a subpoena.

1 Q. And did you retrieve A, B, and C?
 2 A. Yes, I did.
 3 Q. And do you still retain -- let me ask you this.
 4 Did A, B, and C ever leave your custody?
 5 A. No, they did not.
 6 Q. Well, at some point were they forwarded to the
 7 Raynham Police Department?
 8 A. Yes. Correct.
 9 Q. Okay. Are they -- subsequent are they now back
 10 in your possession?
 11 A. Yes, they are.
 12 Q. Do you know whether there were some arrangements
 13 made between Assistant District Attorney Markey
 14 and counsel for the defendant and AMSA to view
 15 those tapes?
 16 A. Yes, there were.
 17 THE COURT: Which tapes are we talking
 18 about? A, B, and C or D, E, and F?
 19 MS. VEENSTRA: D, E, and F.
 20 A. Yes, there were arrangements made.
 21 Q. And were you present?
 22 A. No, I was not present.
 23 Q. Did you ever receive back tapes D, E, and F?
 24 A. No, I did not.
 25 Q. I'm going to show you what appears to be a

1 handwritten receipt and ask you if you recognize
 2 it?
 3 A. Yes, I do.
 4 Q. What do you recognize that to be, Sergeant
 5 Otrando?
 6 A. I recognize this to be a receipt. I believe it
 7 was cosigned by Jason Khoury the supervisor at
 8 AMSA and signed by myself. I signed this the
 9 second time I went back to pick up Tapes A, B,
 10 and C, and he indicates on here that I had seized
 11 Tapes D, E, and F initially.
 12 MS. VEENSTRA: I'd ask that this be
 13 marked as an exhibit.
 14 MR. ARDITO: No objection, your Honor.
 15 THE COURT: It may be marked.
 16 (The receipt was marked Exhibit No. 1
 17 and received into evidence.)
 18 Q. Now, at some point did you ask an Officer Castro
 19 of your police department to assist you?
 20 A. Yes, I did.
 21 Q. And was he actually one of the responding
 22 officers in this investigation anyway?
 23 A. Yes, he was.
 24 Q. What did you ask Officer Castro to do?
 25 A. I gave him custody of the tapes and asked him to

1 go to the REACT Organization which is headed by
 2 Deputy Chief Pacheco of the Raynham Police
 3 Department so that he may view the tapes, extract
 4 whatever information was available.

5 THE COURT: Which tapes are we talking
 6 about here?

7 THE WITNESS: Those were A, B, and C,
 8 your Honor.

9 THE COURT: All right.

10 Q. And does the Raynham Police Department have some
 11 special equipment with which to view this type of
 12 evidence?
 13 A. Yes. It's through REACT.

14 MS. VEENSTRA: If I could have one
 15 moment, your Honor?

16 THE COURT: Uh-huh. While you're
 17 thinking, let me just ask, you have A, B, and C
 18 now. What you don't have is D, E, and F?

19 THE WITNESS: That's correct, your
 20 Honor.

21 MS. VEENSTRA: I have no further
 22 questions of this witness, your Honor.

23 THE COURT: Counsel.

CROSS EXAMINATION

24 BY MR. ARDITO:

1 Q. Detective, did you view A, B, and C?
 2 A. I viewed the tapes. I can't say specifically if
 3 it was A, B, and C. From what Edward O'Brien
 4 informed me, that the views that we saw that day
 5 were on A, B, and C. They have six VCRs, and
 6 they're all set up, and he informed me that what
 7 we were viewing was on A, B, and C. And I
 8 observed portions of it. I didn't view the whole
 9 tape from say 3:00 in the afternoon until 11:00,
 10 but there were portions of A, B, and C I viewed,
 11 yes.
 12 Q. And on Tapes A, B, and C, do you recall how many
 13 hours of tape they were?
 14 A. No, I do not recall.
 15 Q. So, there was six tapes total; am I correct?
 16 A. Yes, sir.
 17 Q. And the facility outside of the supervisor's
 18 office was completely surrounded by cameras,
 19 correct?
 20 A. I don't know if it's accurate to say it's
 21 completely surrounded by cameras. Some cameras
 22 view it like -- I wouldn't say it's completely
 23 surrounded. There are cameras that, you know,
 24 can view it. But to say it's completely
 25 surrounded, I don't believe so.

1 Q. But someone working an eight hour shift would
 2 constantly be on camera, would they not? Or the
 3 facility would be on camera?
 4 A. Yes, yes.
 5 Q. We have what the police transcribed for us on a
 6 VCR of Tapes A, B, and C?
 7 A. Yes.
 8 Q. Did you view that?
 9 A. Yes, I did view that.
 10 Q. And there's less than three minutes on that tape; isn't that true?
 11 A. If you're telling me that. I didn't time it.
 12 Q. But that tape only shows them walking down a room; isn't that true? It shows -- I believe it shows the victim talking to someone, and then her and Mr. Ciambriello walking down a room; isn't that true?
 13 A. Walking down a hallway, and there's some conversation in there, some interaction.
 14 Q. But that's all that tape shows?
 15 A. I don't know if they were completely viewed to extract everything out of those three tapes. I can't say that that's a final product from examining all eight hours from all three tapes. From whatever portion they viewed, that's on that

1 tape.
 2 Q. But that's the size of it though? That's all we have right now?
 3 A. Right now, yes.
 4 THE COURT: Let me just interrupt you. Are these tapes labeled by the camera that took the tape, that took the image?
 5 THE WITNESS: No. On each tape -- from what I recall, I believe it's a multiplex system. So, there's nine cameras on each tape. So, I don't know if that means there would be fifty some odd cameras.
 6 THE COURT: I see.
 7 THE WITNESS: I don't know.
 8 THE COURT: And the tapes are from the six screens on which these nine -- each of which has nine images on it; is that right?
 9 THE WITNESS: Yes. There's six VCRs and each VCR shows nine, I believe, different cameras.
 10 THE COURT: Okay. And these tapes are the ones that came from the VCR?
 11 THE WITNESS: Yes.
 12 THE COURT: And this three minutes or whatever that counsel is asking you about, did

1 somebody extract information or extract images off these tapes?
 2 THE WITNESS: Off A, B, and C, yes, your Honor.
 3 THE COURT: Who did that?
 4 THE WITNESS: That was Deputy Chief Pacheco from the Raynham Police Department.
 5 THE COURT: And do you know what his instructions were, what he was to take off the tape?
 6 THE WITNESS: He went there with Officer Castro who I gave custody of the tapes to, and they were asked to extract whatever they could out of the tapes. They spent eight hours looking and extracting information. From what they imparted to me, they were unable to complete -- they weren't able to go through the whole eight hour shift, your Honor, from each tape. That's a portion of what they have now. There's still more work to do which could be extracted.

7 THE COURT: The extraction was any images of either the defendant or Ms. Kiernan?

8 THE WITNESS: Yes.

9 THE COURT: Okay.

1 Q. I'm sorry, detective. Prior to you seeing this tape, you testified earlier and also at the grand jury that the first tape was from the back of the room; is that correct?
 2 A. Well, the first tape I saw -- well, which part are you asking me about?
 3 Q. Well, when you investigated the alleged crime originally, when you went to answer the first tape, you saw -- you testified that it was from the back; that the camera was behind; isn't that true?
 4 A. I don't know which position you're asking me about. There's one part where they're going down the hallway where the camera is from the back.
 5 Q. That's what you testified to?
 6 A. Yes.
 7 Q. Yes, because you knew this was available. This new tape wasn't available then?
 8 A. No, sir, it was not.
 9 Q. Have you seen this new tape?
 10 A. Yes, sir, I have.
 11 Q. And it clearly shows them walking? You have a frontal view now, correct?
 12 A. Yes, sir, you do.
 13 Q. Was there any dragging in this tape?

1 A. I didn't see any dragging, sir.
 2 Q. Any pushing?
 3 A. I didn't see any pushing, no.
 4 Q. Was there any -- was the alleged victim trying to
 5 stop at any time?
 6 A. I didn't observe that.
 7 Q. You didn't observe that. Is it your testimony
 8 they're just freely walking down into this room,
 9 correct?
 10 A. I wouldn't testify that she was freely brought
 11 down to the room.
 12 MR. ARDITO: Your Honor, may I show
 13 this tape?
 14 THE COURT: Sure. Do you want it at
 15 this point, or do you want it when this
 16 officer -- at this point or when this officer is
 17 completed? Do you want it now?
 18 MR. ARDITO: Well, I'd like to have him
 19 testify to what --
 20 THE COURT: Okay.
 21 MS. VEENSTRA: It might be clearer,
 22 your Honor.
 23 THE COURT: All right.
 24 MS. VEENSTRA: I'd ask that this be
 25 marked as Exhibit 2.

31

1 MR. ARDITO: Well, I believe this is
 2 another shot of what took place. You see them
 3 walking.
 4 THE COURT: What?
 5 MR. ARDITO: This is another of the
 6 stroll down the -- right here. Can you stop
 7 that? Sorry, judge.
 8 MS. VEENSTRA: Would you like me to
 9 rewind it just a little bit?
 10 THE COURT: Yeah.
 11 MS. VEENSTRA: It appears to depict
 12 some shadows and then the two walking down the
 13 hallway.
 14 THE COURT: Right. Okay. When they
 15 get in the frame, if you can stop it there.
 16 THE OFFICER: Pause?
 17 THE COURT: Okay. Counsel, you have
 18 questions?
 19 MR. ARDITO: Thank you, judge.
 20 Q. Where is Mr. Ciambriello's left arm in this
 21 photograph?
 22 A. By his side.
 23 Q. Not around her body as you earlier testified?
 24 A. I had testified that her right hand -- that his
 25 right arm was around her body.

1 THE COURT: Okay.
 2 (The tape was marked Exhibit No. 2 and
 3 received into evidence.)
 4 THE OFFICER: There's no volume on
 5 this.
 6 MR. ARDITO: I'm sorry?
 7 THE OFFICER: There's no volume.
 8 MR. ARDITO: Actually there was some
 9 conversation.
 10 (The tape was played).
 11 Q. Detective, do you know whose voice that is in the
 12 background?
 13 A. No, I do not.
 14 Q. Do you know who put that soda there?
 15 A. It appears to be Heather Kiernan in one of the
 16 voices appears to be her.
 17 Q. And does it appear that there are more than two
 18 voices? Who is that?
 19 A. Heather Kiernan.
 20 MR. ARDITO: Your Honor, I just -- the
 21 detectives then do some further work. It's a
 22 repeat of what was visually depicted, and I'll
 23 leave that for the Court to view.
 24 THE COURT: Okay. Did you have
 25 questions now?

32

1 Q. And did you not say that his left arm appeared to
 2 be around her?
 3 A. No. I testified that in the shot where they went
 4 through the money room, that I couldn't see --
 5 from what I recall of that tape, I couldn't see
 6 his left hand. So, it would lead me to believe
 7 that it was towards the right-hand side of his
 8 body. It wasn't down by his side like it is
 9 here.
 10 Q. Clearly it was by his side when they walked in?
 11 A. That's correct.
 12 Q. No struggle to your --
 13 A. No.
 14 MR. ARDITO: Okay. No further
 15 questions, judge.
 16 THE COURT: Okay. Ms. Veenstra.
 17 REDIRECT EXAMINATION
 18 BY MS. VEENSTRA:
 19 Q. Detective Otrando, is this the money room?
 20 A. No. From my understanding, I may be wrong, but
 21 the money room is the initial -- I think it was
 22 just before this, that door that opened. I
 23 said -- when I spoke about the money room was
 24 when the camera was up here high. Mr.
 25 Ciambriello had his right arm around her side,

1 and they were walking through that -- by that
 2 camera. Then they went through a door, down this
 3 long hallway. That's the long hallway that I saw
 4 from the back on that second camera. I don't
 5 believe that's the money room. I could be
 6 mistaken.

7 Q. Okay. And the other portion of this tape,
 8 sergeant, which appears to show the alleged
 9 victim drinking a soda; do you know when in time
 10 that was with regard to the alleged rape? Do you
 11 know if that was before or after the alleged
 12 rape?

13 A. I'm not sure. I'd have to check.

14 Q. The time?

15 A. Yeah.

16 MS. VEENSTRA: May I, your Honor?

17 THE COURT: You may.

18 Q. Do you see --

19 A. In the lower right hand corner it says 1900. So,
 20 I would have to say that would be after the
 21 incident.

22 Q. And would it be fair to say that the alleged
 23 victim was working alongside of the defendant at
 24 that time?

25 A. That's correct.

1 Q. Did it appear from information you received that
 2 there were employees that actually delivered
 3 money to that location after the alleged
 4 incident?

5 A. That's correct.

6 Q. Is it your belief that that is what is depicted
 7 on that portion of this tape?

8 A. Yes.

9 MS. VEENSTRA: I have no further
 10 questions.

11 MR. ARDITO: Just brief recross.

12 RECROSS EXAMINATION

13 BY MR. ARDITO:

14 Q. Detective, you interviewed my client, correct?

15 A. That's correct.

16 Q. And in interviewing him, you noticed he has a
 17 very heavy heavy Italian accent; is that true?

18 A. Yes.

19 Q. And you heard a voice besides the alleged victim
 20 on that tape; isn't that true? Another voice
 21 just now?

22 A. Yes.

23 Q. And that other voice wasn't Mr. Ciambriello,
 24 correct? There was a third voice?

25 A. I heard two other male voices.

1 Q. Two other males voices, correct? And you're
 2 saying -- you're testifying that this based on
 3 the time took place after the alleged assault,
 4 correct?

5 A. Yes, from the time, yes.

6 MR. ARDITO: All right. No further
 7 questions, your Honor.

8 THE COURT: Okay. Thank you very
 9 much. You may step down.

10 THE WITNESS: Thank you, your Honor.

11 MS. VEENSTRA: The Commonwealth would
 12 call Christopher Markey.

13 THE COURT: Okay.

14 CHRISTOPHER MARKEY, Sworn

15 THE WITNESS: Morning, your Honor.

16 DIRECT EXAMINATION

17 BY MS. VEENSTRA:

18 Q. Could you please state your name for the record?

19 A. Christopher Markey, M-A-R-K-E-Y.

20 Q. How are you employed?

21 A. I'm an assistant district attorney for Bristol
 22 County.

23 Q. I'd like to direct your attention to the month of
 24 May in the year 2001 and ask you whether you had
 25 an opportunity to review an alleged rape

1 regarding a defendant Francesco Ciambriello?

2 A. Yes, I did.

3 Q. And do you know who the lead investigator was on
 4 that case?

5 A. Detective John Otrando from the Attleboro Police
 6 Department.

7 Q. And at some point did you receive information
 8 from Sergeant Otrando regarding information
 9 regarding some surveillance tapes at the location
 10 of the alleged rape?

11 A. Yes.

12 Q. Were you aware of whether some of that
 13 surveillance activity had already been viewed by
 14 Sergeant Otrando?

15 A. Yes.

16 Q. And how did you know that?

17 A. I believe he made mention of it to me, and I said
 18 that we needed to get -- we should get someone --
 19 we should get those tapes and obtain the tapes.

20 Q. And at some point do you know if Sergeant Otrando
 21 seized some tapes initially in the investigation?

22 A. I'm unsure if he seized them right off the bat,
 23 but I know I had conversation with him to get
 24 more tapes or get tapes; but he may have had some
 25 right then that we were making plans. I'm not

sure of that.

Q. And at some point did you have some communication with defense counsel Mr. Ardito regarding viewing some tapes?

A. Yes, I did.

Q. And were some arrangements made to meet with counsel to look at those tapes?

A. We made arrangements to have him view the tapes at our office in New Bedford at 888 Purchase Street on the fifth floor because we have some video equipment that we can use to look at tapes.

Q. At some point did you receive some tapes from Sergeant Otrando?

A. Yes. I believe I went to the Attleboro Police Department, picked those up, and brought those back to New Bedford.

Q. Do you know how many you seized?

A. I believe I had two or three.

Q. And you brought those back to New Bedford for the purpose of trying to view those on equipment that the district attorney's office had?

A. Yes. I was waiting. I made arrangements with Mr. Otrando -- I mean the attorney for the defendant to do it some afternoon I believe it was.

Q. And did you in fact attempt to do that?

A. Yes. Mr. Ardito came down, went to my office, and then two offices away is the video room where we would have that equipment. We went in there. We put the tape in, and we didn't have the proper equipment to view it. Everything was kind of going really fast. As a result of that, I think Mr. Ardito stayed for a little bit longer to view and see if he could make any adjustment. I remember I was doing something else in my office. So, I just went to my office for a little bit, and then Mr. Ardito came over, and we just -- he said, "It's not going to work." I said, "Okay. We'll go up to the armored car place and view the tapes there, and we'll make arrangements there."

Q. And that would be to view those tapes on the actual equipment that it was taped on?

A. Yes.

Q. And so, your attempts to view it at the district attorney's office were unsuccessful?

A. That's correct.

Q. And Mr. Ardito left?

A. Mr. Ardito left. I kept the tapes, and then I went to Attleboro District Court office and -- or

our office. I think we were trying to make arrangements to watch the video with Mr. Ardito again because at that point it was going to be my case; and what happened was I don't think -- there was some mix-up in communication between the two of us, and we didn't go that afternoon. I kept the tapes there. I gave them to Assistant District Attorney Chris Saunders. I said, "Look, I can't -- I'm not going to come back up here. Why don't you look at the tapes", because he was going to end up doing the probable cause hearing. And I left them in the Attleboro District Court office.

Q. And that would have been two, maybe three tapes?

A. Two, maybe three tapes, and that was some time if I remember correctly in the Summer of 2001.

Q. And you said that the purpose of that was so that Christopher Saunders could then meet defense counsel at the facility, the work place facility?

A. That's right. What happened in the meantime was it was decided that Chris was going to actually -- Chris Saunders was going to actually handle the case. It was going to be his first Superior Court case. He was going to do the probable cause hearing and do everything. Some

time towards the end of Summer of 2001 we made that decision. So, I said, "Just you keep it and handle the case."

THE COURT: When you said you left the tapes in the Attleboro District Court office, that's the DA's office?

THE WITNESS: Yeah, that's right. At 120 North Main Street.

Q. And did you have some conversation with Mr. Saunders about the fact he would be handling the case?

A. I did, and I said that he would be handling it. I had talked to his supervisor, and he said it would be fine for him to handle it; and at that point, you know, I'd check up on it once in a while. Hey, what's going on with this case? And then at some point, I don't know when it was, but I know when the case was pending, the defendant either became ill or was involved in some accident, and they continued the case over for a significant amount of time because of a serious injury to the defendant. I remember that. But that's basically how I remember ending it at that point.

Q. And do you know whether Chris Saunders ever

Case 1:04-cv-10131-RBC Document 61-5

viewed those tapes with defense counsel at AMSA?

A. I don't know if he ever viewed it. I heard later that Chris Abreu had viewed the tapes, and he's another assistant DA attorney who worked in the Attleboro District Court. That's the last --

Q. Now, did you ever receive those two or three tapes back?

A. No.

Q. Did you ever take possession of any other tapes seized by the Attleboro Police Department?

A. No.

Q. Would it be fair to say that some time in June of 2002, the case was assigned to me to prosecute?

A. Excuse me?

Q. Would it be fair to say --

A. Yes, it was. For you, yes.

Q. Can you report, Mr. Markey, whether a diligent search of your office has been able to turn up those tapes?

A. I went through every box and every unmarked video that I have in my office to check to see if it could be any relation to this case, and the videos that I viewed and went through did not have any correspondence to this case.

MS. VEENSTRA: I have no further

Filed 02/10/2006 Page 78 of 88

questions of this witness.

THE COURT: Mr. Ardito.

MR. ARDITO: Very briefly, judge.

Thank you.

CROSS EXAMINATION

BY MR. ARDITO:

Q. The last time you saw the tapes was when you delivered them to the Attleboro district attorney's office, correct?

A. That's correct.

Q. And you yourself never viewed the tapes in your office, correct?

A. The only -- I think I did for about two minutes when we -- you and I were sitting there in that office; and all it did was kept -- you couldn't understand anything on it.

MR. ARDITO: No further questions.

MS. VEENSTRA: No further questions of this witness.

THE COURT: Thank you, Mr. Markey.

THE WITNESS: Thank you, judge.

MS. VEENSTRA: At this time, your Honor, I would offer an affidavit of Christopher Saunders. He was unavailable today due to a medical appointment.

MR. ARDITO: I have no objection, your Honor.

THE COURT: Okay.

MS. VEENSTRA: I have shared that with counsel.

THE COURT: All right.

MS. VEENSTRA: I'd ask that that be marked as an exhibit.

THE COURT: Okay.

(The affidavit was marked Exhibit No. 3 and received into evidence.)

MS. VEENSTRA: The Commonwealth would call Christopher Abreu.

CHRISTOPHER ABREU, Sworn

DIRECT EXAMINATION

BY MS. VEENSTRA:

Q. Could you please state your name for the record?

A. My name is Christopher Abreu.

Q. And could you spell your last name, please?

A. It's A-B-R-E-U.

Q. And how are you employed, sir?

A. I am currently employed at the law offices of G.M. Rego. I'm an attorney.

Q. And were you formerly an assistant district attorney in Bristol County?

1 A. Yes, I was.

2 Q. And for how long were you employed with the DA's office?

3 A. For approximately five years from 1997 to 2002, September.

4 Q. And at some point were you assigned to the Attleboro District Court district attorney's office?

5 A. Yes, I was.

6 Q. And do you know your approximate time of service for that office?

7 A. I was there for approximately seven months, and I believe I left in February of 2002 and was transferred to New Bedford.

8 Q. And at some point during your time with the Attleboro District Court district attorney's office, did you become aware of a case that was pending, Commonwealth vs. Francesco Ciambriello?

9 A. Yes, I was.

10 Q. And at some point were you asked to assist Assistant District Attorney Saunders?

11 A. Yes, I was.

12 Q. And can you describe that to the Court, please?

13 A. Well, I believe it was a day where ADA Saunders had a trial, and my trials had pled out. So, he

Case 1:04-cv-10131-RBC Document 61-5

1 asked me if I would simply go view a tape at an
 2 armored car employment place.
 3 Q. And were there some specific plans as to who was
 4 supposed to go to that facility?
 5 A. Yes. I was told that Attorney Ardito would be
 6 there and also the security supervisor would be
 7 there to watch the tapes with us.
 8 Q. And did you receive some tapes to bring to that
 9 location?
 10 A. I believe so, yes.
 11 Q. Do you recall how many tapes you received?
 12 A. I want to say at least two, maybe more than two.
 13 Q. Do you believe it was as many as six?
 14 A. Possibly. It's tough to say. But more than two.
 15 Q. More than --
 16 A. Maybe three.
 17 Q. Okay. Do you recall whether those tapes were
 18 labeled in any way?
 19 A. I do recall that they were labeled with letters
 20 in black marker, I believe, with a circle around
 21 it.
 22 Q. Did you in fact go to AMSA and meet with defense
 23 counsel for the purpose of viewing the tapes?
 24 A. Yes, I did.
 25 Q. And you brought the tapes with you?

46
Filed 02/10/2006 Page 79 of 88

1 A. Yes.
 2 Q. Did you meet a member or an employee of AMSA at
 3 that location?
 4 A. Yes, I did.
 5 Q. Do you remember his name?
 6 A. I believe it was O'Brien, but I'm not totally
 7 sure.
 8 Q. Okay. Do you remember what he looked like?
 9 A. White male. I'd say in his late thirties,
 10 possibly thinning hair, maybe glasses, 180
 11 pounds.
 12 Q. And was he able to assist you in viewing those
 13 tapes with counsel?
 14 A. Yes. We went into the -- like it was a viewing
 15 room where all the cameras were, and we put a few
 16 video tapes in and did watch some segments of the
 17 tapes.
 18 Q. As best you can recall, can you describe what was
 19 depicted on the tapes that you saw at AMSA?
 20 A. From my recollection, the beginning of the tapes
 21 were basically a male and a female sitting down.
 22 It seemed like they were doing some work in a
 23 room, and you really couldn't hear anything on
 24 the tapes. And that was for a lengthy period of
 25 time. I don't recall, but it was more than an

1 hour possibly. And at some point in time, they
 2 get up. And what we had to do was you had to
 3 change different views of the cameras because
 4 each camera was actually on the screen. So, we'd
 5 be watching one segment. That would be them
 6 sitting down. And there would be noise, and you
 7 really didn't hear anything, but you'd just see
 8 some movement. And then we would ask to see
 9 another angle of the camera, and then that camera
 10 angle would come up. So, at one point in time
 11 they did get up from original location where they
 12 were talking. You didn't hear anything. And
 13 then they walked into a hallway. And I do recall
 14 when they entered that hallway, I recall the
 15 female saying, "I don't want to go back there."
 16 I also recall the male had his hand not so much
 17 around her waist, but towards her backside,
 18 walking with her. And I recall that he did have
 19 a firearm tucked in the belt in his back.
 20 Q. So, your view of the walking of the hallway as
 21 best you can describe it, is that a forward view,
 22 a backward view, or a combination with side? As
 23 best you can describe it.
 24 A. The view that I remember is it's -- the view was
 25 going forward down the hallway, and they were

48
1 entering the hallway, and that's how I could see
 2 his hand placement and also see the firearm
 3 tucked in the back of his pants.
 4 Q. And when you say that it was tucked in the back
 5 of his pants, is that in the back, or on the
 6 side, or --
 7 A. It was just tucked into the back of his belt
 8 area.
 9 Q. Would that be on his left side or his right side?
 10 A. I recall his left side.
 11 Q. And when you say that he was walking down the
 12 hallway with her, where was her body positioned?
 13 Was it on his right side or his left side?
 14 A. She was on his right side.
 15 Q. And you said that you heard some words uttered?
 16 A. Yes.
 17 Q. Did you -- were you able to see any specific
 18 facial expressions or obvious signs of demeanor?
 19 A. No, I don't recall that.
 20 Q. On either the male or the female?
 21 A. Yeah. Nothing.
 22 Q. Did you see what was depicted once they got down
 23 the hallway?
 24 A. They entered a room, but that's all that happened
 25 at that point. Once they entered the room, you

Case 1:04-cv-10131-RBC Document 61-5

1 didn't see anything. I was told there were no
 2 cameras in that room.
 3 Q. Okay. So, do you -- were you able to see how the
 4 door gets opened?
 5 A. I don't recall.
 6 Q. And did that door -- when you say that you can't
 7 see, you don't see anything after that? The door
 8 closes?
 9 A. Yes.
 10 Q. Did at some point that door open?
 11 A. Yes. I believe it was approximately five minutes
 12 after that. I believe it was like a short period
 13 of time. Maybe five minutes. The female exited
 14 first, and then the male exited some time after
 15 that.
 16 Q. Again, did you see -- were you able to, or do you
 17 recall any obvious signs of demeanor or facial
 18 expressions?
 19 A. No.
 20 Q. On either of the two parties?
 21 A. No. It was just walking from that room, first
 22 the female and then later the male.
 23 Q. And were you able to hear anything on that tape?
 24 A. No.
 25 Q. That portion of the tape?

Filed 02/10/2006 Page 80 of 88

1 A. No.
 2 Q. In viewing those tapes, did you have an
 3 opportunity to see anything that was depicted on
 4 the outside of the building?
 5 A. Yes. I do recall the female and the male later
 6 smoking outside in the parking lot together.
 7 Q. And do you know if that was later in time than
 8 what was -- according to the tape than what was
 9 depicted as them going into the room?
 10 A. It was after the room. It was later in time.
 11 Q. And you say that you saw who outside smoking?
 12 A. The male and the female.
 13 Q. Anybody else?
 14 A. Not at first. At first I believe if my
 15 recollection is correct, it was just the male and
 16 the female smoking outside. Then the male went
 17 inside again.
 18 THE COURT: Was this the same male that
 19 you'd seen on the tape before?
 20 THE WITNESS: Yes.
 21 THE COURT: Okay.
 22 THE WITNESS: And the male and female
 23 were outside smoking. At one point the male went
 24 inside. Then if my recollection is correct,
 25 another party actually went to that location. I

1 saw a car pull up. There was some conversation,
 2 and later the female went back into the building.
 3 Q. And you said that another party arrived. Would
 4 that be male or female?
 5 A. I don't recall. I just remember a car.
 6 Q. Did you see some interaction between the alleged
 7 victim and that party who arrived?
 8 A. Yes.
 9 Q. Outside the building?
 10 A. Yes.
 11 Q. And then the alleged victim returned inside?
 12 A. Yes.
 13 Q. Can you describe, if you can -- you went to the
 14 facility to view these tapes?
 15 A. Yes.
 16 THE COURT: Ms. Veenstra, just for a
 17 second. You said you described some interaction
 18 between this person who arrived and the woman
 19 outside. What did you see?
 20 THE WITNESS: It was just basically the
 21 female walking up to that car, and I don't recall
 22 if she went in the car or not, or if that person
 23 from that car got out to talk. I just remember
 24 some interaction taking place.
 25 THE COURT: Okay.

1 Q. Can you describe what, if any, security measures
 2 were in place that you became aware of that day?
 3 A. Well, it was a very secure facility. That's one
 4 of the reason I actually remember going there and
 5 viewing it. Because you had to be buzzed in a
 6 couple of doors to get into the building. And
 7 they had cameras in numerous places around, and
 8 also I still remember that they had actually a
 9 fingerprint entry. To get into a certain room,
 10 you had to have the correct fingerprint to enter
 11 the room. It was a pretty secure facility.
 12 Q. And now, do you recall seeing anything else
 13 depicted on the tapes during your viewing at
 14 AMSA?
 15 A. Not that I recall.
 16 Q. And so, at some point yourself, counsel, and the
 17 employee of AMSA finished viewing those tapes; is
 18 that right?
 19 A. Yes.
 20 Q. And did you leave with those tapes?
 21 A. I don't recall. I believe that I would have left
 22 with the tapes. At the time the only reason I
 23 would have left the tapes there was to provide
 24 copies for the defense counsel and for the
 25 district attorney's office because at the time we

Case 1:04-cv-10131-RBC Document 61-5

1 did not have the technology to make copies, but I
 2 still don't think I would have done that. I
 3 think I would have brought the tapes back to the
 4 office, but I'm unsure.

5 Q. So, you don't have a specific memory of what
 6 happened to those tapes?

7 A. No. The only thing I remember is actually going
 8 there and viewing the tapes.

9 MS. VEENSTRA: I have no further
 10 questions of this witness.

11 THE COURT: Mr. Ardito.

12 MR. ARDITO: Yes.

13 CROSS EXAMINATION

14 BY MR. ARDITO:

15 Q. We viewed those tapes together, correct?

16 A. Yes.

17 Q. And we were there just about a couple of hours;
 18 isn't that true?

19 A. Yep, that's correct.

20 Q. So, we really didn't get to see all the tapes?

21 A. No, we did not.

22 Q. You stated on the direct examination that another
 23 person pulled up, and there was some interaction?

24 A. Correct.

25 Q. Do you remember seeing on any of the tapes that

Filed 02/10/2006 Page 81 of 88

1 person inside the facility?

2 A. I don't recall that.

3 Q. You testified on direct examination that before
 4 the alleged incident you saw Mr. Ciambriello and
 5 the alleged victim sitting together working?

6 A. Correct.

7 Q. During that period of time when you saw them
 8 sitting together working, did you see Mr.
 9 Ciambriello attack her in any way, shape, or
 10 form?

11 A. I did not see any type of struggle taking place.

12 Q. Do you recall seeing a video -- do you recall
 13 seeing on the video some time after the alleged
 14 incident Mr. Ciambriello and the alleged victim
 15 in a cafeteria type setting having a soda?

16 A. I don't recall that.

17 MR. ARDITO: No further questions,
 18 judge.

19 THE COURT: Ms. Veenstra?

20 MS. VEENSTRA: Nothing further of this
 21 witness.

22 THE COURT: All right. Thank you very
 23 much.

24 THE WITNESS: Thank you.

25 THE COURT: You may step down.

1 MS. VEENSTRA: Russell Castro.

2 RUSSELL CASTRO, Sworn

3 THE WITNESS: Good morning.

4 THE COURT: Good morning.

5 DIRECT EXAMINATION

6 BY MS. VEENSTRA:

7 Q. Could you please introduce yourself for the
 8 record?

9 A. Russell Castro, C-A-S-T-R-O.

10 Q. And how are you employed, sir?

11 A. Employed with the City of Attleboro. Police
 12 officer.

13 Q. And how long have you been a police officer with
 14 the City of Attleboro?

15 A. Approximately ten years.

16 Q. I'd like to direct your attention, Officer
 17 Castro, to the month of May in the year 2001, and
 18 ask you whether you were dispatched along with a
 19 number of other officers to AMSA located in the
 20 City of Attleboro?

21 A. Yes. Originally Sturdy Hospital.

22 Q. Okay. And at some point did you respond to AMSA?

23 A. Yes.

24 Q. And what other officers, if you recall, also
 25 responded to that location?

1 A. Officer Larsen and Detective Otrando.

2 Q. At that time did you have an opportunity to view
 3 the facility and some video surveillance?

4 A. Yes.

5 Q. Can you describe as best you recall what you saw
 6 depicted on the video surveillance?

7 A. On the video surveillance we seen the male and a
 8 female, Mr. Ciambriello and Kiernan the female --

9 Q. The alleged victim?

10 A. -- the alleged victim walking through a room. I
 11 believe it was the money processing room. At
 12 that point the male had his right arm around her
 13 backside, lower back, upper buttocks, walking
 14 through the room. Then on another view, more of
 15 a back view, they walk down a hallway with the
 16 hand on the back and entering an office; and
 17 several minutes later, the female exited the
 18 office and went to the left.

19 Q. Can you estimate, if you can, about how long they
 20 were in that office?

21 A. I'd say less than four minutes.

22 Q. Did you ever see any tape which -- or segment or
 23 portion of a tape which may have depicted the
 24 inside of that office?

25 A. No.

1 Q. Did you hear any words that were spoken when
 2 viewing that tape?
 3 A. Not that I recall.
 4 Q. Did you note any obvious facial expressions or
 5 expressions of demeanor on either the alleged
 6 victim or Mr. Ciambriello?
 7 A. No, I did not.
 8 Q. Now, I'm going to direct your attention to later,
 9 much later in the investigation. Were you asked
 10 by Sergeant Otrando of your department to bring
 11 some tapes to the Raynham Police Department,
 12 specifically Deputy Chief Louis Pacheco?
 13 A. Yes.
 14 Q. And do you know what the purpose of that was?
 15 A. For further investigation to try to get any other
 16 information out of the tapes.
 17 Q. And did you bring some tapes to Deputy Chief
 18 Pacheco?
 19 A. Yes, I did.
 20 Q. And how many did you bring?
 21 A. Three.
 22 Q. And were they labeled?
 23 A. I believe they were labeled.
 24 Q. And how were they labeled?
 25 A. A, B, and C.

1 Q. And did you have an opportunity to work with
 2 Deputy Chief Pacheco and view those tapes?
 3 A. Yes.
 4 Q. And can you -- let me ask you. Was he able to
 5 retrieve some images from those tapes?
 6 A. Yes.
 7 Q. And do you know if those were then transferred
 8 onto a videotape?
 9 A. Yes, they were.
 10 Q. And do you know if a copy of that videotape was
 11 provided to me?
 12 A. I brought it back to Sergeant Otrando, and I
 13 believe he's given it to you, yes.
 14 Q. And did you have an opportunity to view that
 15 tape?
 16 A. Yes, I did.
 17 Q. And can you describe what, if anything, was
 18 depicted on the tape? What was depicted? What
 19 did you see?
 20 A. The tape that was made?
 21 Q. Yes.
 22 A. In the first scene you're going to see -- I
 23 believe it's like the cashiers room where they
 24 check out. The trucks will come in and go. I
 25 believe that's the room it is. You're going to

1 see a reflection in door number 1's window of a
 2 symbol of a male and a female walking through
 3 that room. The male has his arm around that
 4 female's backside.
 5 Q. Did you see anything else depicted on that tape?
 6 A. Yeah. Several minutes later they were seen
 7 walking down a hallway. I refer to it as a money
 8 cashing room because there was all counting
 9 machines there, and the male and the female were
 10 walking down the corridor. The male has his arm
 11 around the backside of the victim; and then as
 12 they're coming off the screen, you can see the
 13 hand, his left hand come up to the elbow.
 14 Q. Okay. And that was depicted on the tape?
 15 A. Yes.
 16 Q. Now, you said that you saw a similar scene at the
 17 night -- on the night of the alleged incident; is
 18 that right?
 19 A. Yes.
 20 Q. What is the difference between those two
 21 depictions of the two of them coming down that
 22 hallway? What was the difference between them?
 23 A. On this one here they're coming at the camera.
 24 The one that I viewed at the scene, they were
 25 walking -- the camera was the backside of them,

1 more toward the backside of them.
 2 Q. Okay. While walking down that hallway -- strike
 3 that. Did you notice or -- describe what else
 4 was depicted on that tape?
 5 A. Later on, I believe it was like 1900 hours, the
 6 female, the alleged victim comes up, puts a soda
 7 can on the door rim. It's like a shelf on door
 8 #2, I believe it was. And several minutes later
 9 she walks back to that, and it appears that the
 10 defendant's checking in or cashing out a truck,
 11 because you can hear -- you can't really hear,
 12 but you can hear the money banging on the counter
 13 in one of the volumes; and then the alleged
 14 victim is standing to the left at door 2 which is
 15 probably like three to four feet from door 1, and
 16 she's handing the alleged defendant looks like
 17 rubber bands to strap the money.
 18 Q. Would it be fair to say they appear to be working
 19 together?
 20 A. Yes.
 21 Q. Did it appear or sound as if there was more than
 22 the alleged victim and Mr. Ciambriello in that
 23 immediate vicinity?
 24 A. Yes.
 25 Q. There were more than those two voices?

Case 1:04-cv-10131-RBC Document 61-5

1 A. I don't know about the voice, but you can believe
 2 that there's two males there and the female. I'd
 3 have to view it.

4 Q. The original tapes that you brought to Raynham
 5 Police Department Deputy Chief Pacheco, were
 6 those subsequently given back to you?

7 A. Yes.

8 Q. And you said that -- or strike that. Did you
 9 turn those over to someone?

10 A. Yes, I did.

11 Q. Who did you turn those over to?

12 A. I returned them back to Sergeant Otrando.

13 MS. VEENSTRA: If I could have one
 14 moment, your Honor? I have no further questions
 15 of this witness.

16 THE COURT: Mr. Ardito.

17 CROSS EXAMINATION

18 BY MR. ARDITO:

19 Q. Detective, did you happen to see any tape of
 20 them -- when I mean them, I mean Mr. Ciambriello
 21 and Ms. Kiernan. Did you ever see any tape of
 22 them working together?

23 A. Just that one at the end of that made tape by
 24 Chief Pacheco.

25 Q. And which tape -- could you describe that? I'm

Filed 02/10/2006 Page 83 of 88

1 not sure --

2 A. It was -- they were at the two doors that I just
 3 described, door 2 and door 1. She appeared to be
 4 handing him elastics.

5 Q. And that was the one that allegedly they're
 6 working together after the incident?

7 A. Yes.

8 Q. Nothing prior to?

9 A. Not to my recollection, no.

10 Q. Did you see any video or any tape of another
 11 woman in the building?

12 A. I did not, no.

13 Q. Did you see the video of the alleged victim
 14 leaving the area where she alleged the assault
 15 took place?

16 A. On the night of it happening?

17 Q. Yes.

18 A. The night of it happening, they left I guess it
 19 was the office area. They left the office area.
 20 She left the office area.

21 Q. And isn't it true it was a clear picture of her
 22 leaving? She was walking towards the camera?

23 A. She walked out and took a left.

24 Q. And you could see her very plainly?

25 A. I could see her. I couldn't see her face if

1 that's what you're asking me.

2 Q. All right. What about her clothes?

3 A. I don't recall her clothes.

4 Q. You can't tell us if her clothes were ripped or
 5 torn --

6 A. No.

7 Q. -- or together, not together?

8 A. No, I don't have --

9 Q. You have no recollection?

10 A. No.

11 MR. ARDITO: No further questions,
 12 judge.

13 THE COURT: Ms. Veenstra?

14 REDIRECT EXAMINATION

15 BY MS. VEENSTRA:

16 Q. Let me ask you, Officer Castro, if her clothes
 17 had been disheveled in any way, would you have
 18 noticed it?

19 A. From that view, probably not, in my recollection.

20 Q. Okay.

21 MR. ARDITO: Redirect, your Honor?

22 THE COURT: Yep.

23 MR. ARDITO: Recross.

24 RECORDING EXAMINATION

25 BY MR. ARDITO:

1 Q. Is it your testimony, detective, that on a rape
 2 case if you have a video of someone walking away
 3 from the incident, you're not looking at that
 4 person?

5 A. I couldn't see with the clarity of the film, to
 6 my recollection, and I only seen the tape for a
 7 short time. I'm not the investigating detective.

8 Q. So, --

9 MR. ARDITO: No further questions.

10 THE COURT: Okay.

11 MS. VEENSTRA: Nothing further.

12 THE COURT: Thank you very much. You
 13 may step down.

14 MS. VEENSTRA: Deputy Chief Louis
 15 Pacheco. Your Honor, I would be offering this
 16 evidence just to describe the technology for the
 17 Court.

18 THE COURT: Okay.

19 LOUIS PACHECO, Sworn

20 DIRECT EXAMINATION

21 BY MS. VEENSTRA:

22 Q. Could you please introduce yourself for the
 23 record?

24 A. My name is Louis, L-O-U-I-S, Pacheco,
 25 P-A-C-H-E-C-O. I'm a police officer in the Town

Case 1:04-cv-10131-RBC Document 61-5

1 of Raynham, and I currently hold the rank of
 2 deputy chief.

3 Q. How long have you been with the Raynham Police
 4 Department?

5 A. Approximately thirty years.

6 Q. And let me ask you, what is REACT, R-E-A-C-T?

7 A. REACT is a Regional Electronic and Computer
 8 Crimes task force stationed in Raynham. It has
 9 about twenty-eight different agencies involved,
 10 and we deal with computer and video forensics.

11 Q. And what is a multiplex system, if you can?

12 A. Basically it's recording; and when talking about
 13 video, it's recording multiple images to the same
 14 tape from different cameras.

15 Q. And would that be a normal videotape that it's
 16 recorded on?

17 A. Could be, yes.

18 Q. If one tried to view a videotape in which a
 19 number of images were depicted on that same tape,
 20 what would one see?

21 A. If you used a normal VCR, you'd see a fast
 22 collage of pictures go by the screen.

23 Q. Would it be fair to say that they may not be
 24 decipherable?

25 A. They wouldn't be until you slowed the speed up on

Filed 02/10/2006 Page 84 of 88

1 the VCR, yes.

2 Q. And is it more involved than just slowing it, or
 3 do you have to isolate, or can you describe what,
 4 if any, procedure you would go through to
 5 retrieve images?

6 A. Well, basically a video image is laid down at
 7 30 -- 29.97 frames per second when you watch a
 8 regular video, normal regular video. Obviously
 9 the tapes are only two hours long. So, if you
 10 want to put multiple cameras on, you can't keep
 11 thirty frames per second because the tape would
 12 only last two hours for one camera and more for
 13 more cameras. So, the technology of a multiplex
 14 system picks certain frames which are made from
 15 two fields, the odd and the even, and lay them
 16 down on the videotape as it runs depending on --
 17 and how many frames you get laid on depends on
 18 how long the time lapse is. So, if you had your
 19 tape on for forty-eight hours, you're taking a
 20 two hour tape and laying down forty-eight hours
 21 of pictures. If you have your system set up for
 22 twenty-four hours, then you're putting
 23 twenty-four hours of pictures on two hours.

24 THE COURT: And how does the machine
 25 pick the frame? Is it a time issue, or is it by

1 if there's movement?

2 THE WITNESS: It's generally a time
 3 issue, your Honor. However, it could be set by
 4 the operator. Different systems -- for instance,
 5 if you had a camera setting up in this particular
 6 courtroom, you may want the camera that's got the
 7 witness on it more than the camera that's taking
 8 the back of the thing. So, you adjust it so so
 9 many frames get recorded from that camera.
 10 Depending on how the system is set up, you could
 11 adjust it manually. Most just rotate around. A
 12 frame, a frame, a frame, a frame.

13 Q. So, with those systems, is it fair to say that
 14 you may not have or probably would not have
 15 continuous coverage of one particular location?

16 A. Absolutely true.

17 Q. At some point, deputy chief, were you asked to
 18 assist Sergeant --

19 THE COURT: Let me just ask another
 20 question before you go from that. So, if you
 21 have a system where you've let's just say put in
 22 a two hour tape to take an eight hour shift, that
 23 tape is going to cover the whole eight hours, but
 24 it's going to record the frames as it has been
 25 told to pick those frames?

1 THE WITNESS: Yes, as it's been told to
 2 depict them, and so many frames to make it fill
 3 the eight hours.

4 THE COURT: Right.

5 THE WITNESS: So, if it was a
 6 twenty-four hour tape, you'd have less frames.
 7 You'd have one frame, for instance, every three
 8 seconds. If it was forty-eight, you'd have one
 9 frame every six seconds.

10 THE COURT: So, if you have a system
 11 like the one that was involved in this case where
 12 there are six VCR screens that you can look at of
 13 these cameras taking the videos, and they're
 14 recording however they're set up on the time,
 15 each of those screens is going to cover -- the
 16 tapes for those VCRs is going to cover the period
 17 that it's set for? Am I making myself clear?

18 THE WITNESS: It will cover the period
 19 of time, and depending on the settings of the
 20 unit, which I never saw, it would -- how many
 21 frames you get per second. So, you could get --
 22 you're supposed to get 29.97 frames per second.
 23 As you extend that tape over two hours, that
 24 drops down to -- some systems you only get one
 25 frame every ten seconds.

1 THE COURT: But you could cover -- you
 2 could set it to cover eight hours or twenty-four
 3 hours or forty-eight hours?

4 THE WITNESS: Yes, ma'am. Yes, your
 5 Honor.

6 THE COURT: Okay.

7 Q. And do you know what, if any, setting was in
 8 place with regard to an alleged incident at
 9 Armored Motor Services of America in May of 2001?

10 A. I have no personal knowledge of what the settings
 11 were or anything. I may -- you may get some
 12 information off of the tape that we did.
 13 However, those are adjustments that are made at
 14 the system. You would have to go to the scene
 15 and look.

16 Q. And you were actually asked by the Attleboro
 17 Police Department to assist them in retrieving
 18 some images; is that right?

19 A. Yes, I was.

20 Q. And were you able to retrieve some images which
 21 appear to depict a male and female walking down a
 22 hallway at that location?

23 A. Yes, I did.

24 Q. And were you also able to retrieve some
 25 depictions of a female working near a door with a

1 soda and some voices in the background?

2 A. Yes, I was.

3 Q. And were you working with three tapes when asked
 4 to assist?

5 A. Yes.

6 Q. Were those tapes ultimately returned to the
 7 Attleboro Police Department?

8 A. Yes.

9 Q. And you were able to provide a videotape of the
 10 images that you were able to retrieve?

11 A. Yes. Generally at REACT what we do is the police
 12 officers bring the tape in, make an appointment
 13 to bring the tape in. We digitize the tape. So,
 14 we take it from an analog signal to a digital
 15 signal. Once you have it as a digital signal,
 16 it's a data base, and you can play it, put it
 17 back. You don't destroy the tape. On a regular
 18 tape if you pause a regular tape or you do
 19 anything with it, you're actually destroying the
 20 tape, because the heads are still spinning, but
 21 the tape's stopped. So, you're wearing off the
 22 oxide. So, by digitizing it allows you to work
 23 on it, you know, ad infinitum.

24 THE COURT: Do you recall what period
 25 of time -- what the hours over which these --

71
 1 that these tapes covered?

2 THE WITNESS: I don't recall that right
 3 now, your Honor.

4 THE COURT: Do you recall whether they
 5 were -- they each covered the same amount of
 6 time?

7 THE WITNESS: The section that I looked
 8 at, that I was asked to examine was relatively
 9 the same amount of time, the same day and the
 10 same hour.

11 THE COURT: On each tape?

12 THE WITNESS: On each tape.

13 THE COURT: Okay.

14 MS. VEENSTRA: I have no further
 15 questions of this witness.

16 THE COURT: Mr. Ardito.

17 MR. ARDITO: Very briefly, judge.

18 CROSS EXAMINATION

19 BY MR. ARDITO:

20 Q. You were able to transcribe -- transpose one copy
 21 of the tape for the Attleboro police, correct?
 22 A. I didn't hear the question.
 23 Q. I'm sorry. You were able to make a copy?
 24 A. Yes. I changed the original tape to digital and
 25 then played the digital back onto a VCR, which

1 you can have more copies or whatever you want.

2 Q. And during this process you were able to view the
 3 three tapes that the Attleboro police took to
 4 your office, correct?

5 A. Pieces of them. I didn't view the whole thing.

6 Q. You didn't view the whole thing?

7 A. No.

8 Q. And in your work, the only thing you were able to
 9 copy for the Attleboro police was a couple
 10 walking down an aisle?

11 A. That was what they had asked me to reproduce,
 12 yes, sir.

13 Q. And there was a little conversation with the
 14 alleged victim and a soda can and some voices in
 15 the background, correct?

16 A. Yes, sir.

17 Q. There was nothing else on those tapes?

18 A. Not that I saw, sir.

19 MR. ARDITO: No further questions.

20 THE COURT: Ms. Veenstra?

21 MS. VEENSTRA: I have nothing further.

22 THE COURT: Thank you very much.

23 Anything further, Ms. Veenstra?

24 MS. VEENSTRA: No, your Honor.

25 THE COURT: Commonwealth rests?

1 MS. VEENSTRA: Yes, your Honor.

2 THE COURT: Mr. Ardito, anything
3 further?

4 MR. ARDITO: Just a closing regarding
5 the motion to dismiss, your Honor.

6 THE COURT: Okay. Why don't I hear
7 you.

8 MR. ARDITO: Briefly, again, we've
9 heard testimony from Chris Abreu the
10 Commonwealth's witness. He was the assistant
11 district attorney that at the time viewed the
12 tapes with myself. He testified under direct
13 examination that he saw Ms. Kiernan and Mr.
14 Ciambriello working together at a bench and then
15 get up and leave. In the grand jury
16 investigation, in this report she states that --
17 and I'm sure she's going to testify to -- that he
18 began his assault while they were sitting down.
19 That he had his arms around her, he had his legs
20 around her, he was unbuttoning her blouse, he was
21 biting her, he was massaging her. We just heard
22 from the district attorney who said that he would
23 have testified that that would have happened,
24 that they were working together, they got up, and
25 they left. It's issues like that that make the

1 losing of this tape so prejudiced.

2 Again, on the tape and ultimately grand
3 jury testimony, Ms. Kiernan calls a friend of
4 hers who arrives. And we heard testimony that
5 Mr. Saunders -- Mr. Abreu saw this young lady
6 show up, and they were outside. The tape clearly
7 showed that they were smoking outside, and they
8 described that in their grand jury testimony.
9 Then this young lady goes into the building with
10 the alleged victim, and they're all sitting
11 together. Then this lady leaves of course, and
12 the rest is not on the tape. The tapes clearly
13 showed when we saw them that there was a
14 cafeteria where Mr. Ciambriello asked her for
15 soda, and she says she -- she says in the grand
16 jury report that that never happened. Yet we saw
17 her with a can of soda after the incident.

18 These tapes are vitally important to
19 any defense we have. You couldn't possibly
20 cross-examine any witness thoroughly unless we
21 had these tapes. They show a completely
22 different picture. They show the demeanor which
23 was asked for, and I state that in my motion when
24 one of the grand jurors asked the police what was
25 her facial expression like. I disagree with the

75
1 detective. I mean it was clear when she left the
2 ladies room. Certainly I would think a jury
3 would want to see this four or five minute
4 interlude, what she looked like when she walked
5 out; and the camera was clearly on her face,
6 clearly on her body. She turned into the camera
7 and walked to the ladies room. Without these
8 tapes, we are crippled, judge. We need these
9 tapes to try the case.

10 Now, if they were lost by the police
11 department, if there was a mishandling between
12 the district attorney's office and the police
13 department, then so be it. This case should be
14 dismissed. There is case law. I cite case law.
15 This case should not go forward. You've
16 handcuffed us.

17 THE COURT: Mr. Ardito, what I
18 understood from these witnesses is that the tapes
19 that you do have or the piece that you do have
20 covers the whole period of time when she was --
21 when Ms. Kiernan and Mr. --

22 MR. ARDITO: It's Ms. Kiernan and Mr.
23 Ciambriello, your Honor.

24 THE COURT: -- Ciambriello were at the
25 facility that night. It just doesn't give the

1 same views that you're talking about.

2 MR. ARDITO: No, your Honor.

3 THE COURT: Do you agree with that?

4 MR. ARDITO: No, I disagree. The views
5 we're talking about are on the three tapes that
6 were never transcribed.

7 THE COURT: No, no, no, I understand
8 that. What you're saying is there were views on
9 other tapes --

10 MR. ARDITO: Correct.

11 THE COURT: -- that were not
12 transcribed. But these tapes that they do have
13 and were transcribed cover the same period of
14 time.

15 MR. ARDITO: They can't, because there
16 are other people in the other tapes. How can
17 they cover the same period of time?

18 THE COURT: I understood Chief Pacheco
19 to say that the way this system works, each of
20 the tapes that he looked at covered the same
21 period of time before and after the alleged
22 assault.

23 MR. ARDITO: Then --

24 THE COURT: But they don't show what
25 you say the other tape shows. So, they don't

1 show the same views, but they cover the same
 2 period of time. You say that's not correct?

3 MR. ARDITO: I disagree, because I know
 4 what I saw. We saw other tapes.

5 THE COURT: But do you understand my
 6 question?

7 MR. ARDITO: Yes. Yes, and I disagree
 8 with the chief.

9 THE COURT: Okay. All right.

10 MR. ARDITO: How is that possible, your
 11 Honor? He's showing us he transcribed a period
 12 of time that they were working, that they walked
 13 from room 1 to room 2 and down the aisle. Then
 14 he goes back to I believe it's 1900 and -- I
 15 forgot the exact time -- where again she's
 16 working with another person. Where is -- I mean
 17 he himself testified that if there were any
 18 images, he would have picked them out.

19 THE COURT: That's what I'm saying.
 20 The views that you say you saw are not on these
 21 tapes.

22 MR. ARDITO: Correct.

23 THE COURT: But that doesn't mean that
 24 it doesn't cover the whole period of time that
 25 you're concerned about. These tapes cover the

1 same period of time.

2 MR. ARDITO: Yes.

3 THE COURT: Okay.

4 MR. ARDITO: Yes.

5 THE COURT: All right. Okay.

6 MR. ARDITO: Now I understand.

7 THE COURT: Ms. Veenstra.

8 MS. VEENSTRA: Thank you, your Honor.

9 I'd ask your Honor not to dismiss this case. I
 10 know that counsel is asking for a dismissal. I'd
 11 suggest that that is a drastic remedy in a case
 12 in which it comes down -- the central issue in
 13 this case is what happened when they went into
 14 that room and were in that room for five
 15 minutes. That has always been the issue in this
 16 case, and that is the central issue.

17 The cases that talk about dismissal is
 18 when the defendant is foregone from any possible
 19 defense or a theory of defense. Counsel has
 20 suggested I know to me that this is an issue of
 21 consent, and the issues that he raises for
 22 reasons to need the tape, your Honor, I believe
 23 are adequately addressed in my motion. It is
 24 much conduct that the alleged victim herself has
 25 already testified to under oath. For example, if

1 the witness says as she initially did to the
 2 police that she was dragged into that room, she
 3 testified before the grand jury that she was not
 4 in fact dragged. I believe she indicated that
 5 she was guided. She cannot now come before any
 6 court and reasonably be expected to say that she
 7 was dragged. The alleged victim in this case
 8 actually admitted that she was allowed outside by
 9 the defendant who had to buzz her out to smoke
 10 and talk with her friend. That is not something
 11 she can now deny. So that, the issue -- the
 12 depiction on the tape of them walking down the
 13 hallway I'd suggest is important. The depiction
 14 of her talking and working with the defendant
 15 after the alleged incident is very important to
 16 the defendant obviously. Those important
 17 depictions will be before the fact finder.

18 Counsel suggests a very drastic
 19 remedy. I suggest to the Court that there are
 20 less drastic remedies. If this Court were to
 21 find that some remedy -- this defendant needs
 22 some remedy to get a fair trial, the cases that
 23 the Commonwealth and I believe the defendant
 24 cite, there are other alternatives. The Court
 25 can obviously consider suppression of any of that

1 testimony, any testimony regarding what was
 2 depicted on the tapes like the tapes never
 3 existed. Tactically for a defendant I would
 4 suggest that that would be his call. Or the
 5 Court's. There is I think possible based on
 6 testimony here that there may be a way to
 7 stipulate as to what was depicted on those tapes
 8 and put that before the fact finder. Counsel has
 9 not suggested to me -- and I think he may be in a
 10 difficult position because he may be a witness,
 11 but he has not suggested to me that what was --
 12 what has been described as depicted is different
 13 than his recollection. So that, a stipulation
 14 may be possible. Counsel with a stipulation
 15 could also have curative or a sort of instruction
 16 by the Court that any discrepancy or doubt as to
 17 what was depicted on the missing evidence would
 18 be in the defendant -- would need to be in favor
 19 of the defendant. And counsel could lastly argue
 20 that the Commonwealth has lost evidence.

21 So, I'd suggest that the remedy counsel
 22 seeks here is drastic, and I'd ask the Court not
 23 to dismiss the case, but allow this case to go to
 24 trial and to allow the alleged victim her day in
 25 court. Thank you.

1 THE COURT: Thank you very much.
2

3 MR. ARDITO: Your Honor, I have a last
4 minute motion -- I don't know if it reached the
Court -- regarding --

5 THE COURT: I'm sorry. What?

6 MR. ARDITO: I'm sorry, your Honor. I
7 filed a last minute motion last week knowing we
8 were going to be here today about a gag order.
9 Apparently I've got every TV station in the
10 neighborhood in the State of Rhode Island and
11 Massachusetts contacting both the defendant
12 and -- the victim is giving interviews about how
13 these lost tapes are going to hurt her in a civil
14 lawsuit. I filed a motion. I'd like to have
15 this stop. It's bad enough we don't have the
16 tapes. Now she's out there saying she'll never
17 get a fair trial. So, if there's any way we
18 could --

19 THE COURT: Okay. Ms. Veenstra, do you
20 have a position on this?

21 MS. VEENSTRA: Your Honor, I don't. I
22 can tell the Court that there have been a number
23 of statements. This case has garnered some
24 press. We are scheduled for trial on September
25 8th. I'd leave that to the Court's discretion.

1 THE COURT: Okay. I don't have it in
2 the file, but we'll find it, and I'll rule on it.

3 MR. ARDITO: Thank you, judge.

4 THE COURT: Okay.

5 (The Court recessed at 11:50 a.m.)

CERTIFICATE

I, Lori R. Saulnier, Official Court Reporter, do hereby certify that the foregoing record, Pages 1 through 82, is a complete, accurate, and true transcription of my stenographic notes taken in the aforementioned matter to the best of my skills and ability.

Lori R. Saulnier
LORI R. SAULNIER
Official Court Reporter

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